

GUAM BAR BRIEF

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QUARTERLY
NEWSLETTER



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Buenas yan Hafa Adai todu hamyo!

The Board of Governors is pleased to report that despite the restrictions and limitations imposed by the Covid-19 pandemic, work to improve services for our membership was not interrupted. We forged ahead with our web development project and successfully launched our 100% automated registration process. We are pleased to report that for all classes of membership, we had a 97% compliance rate. More upgrades are on the way.

In addition, we launched the Video On-Demand CLE courses. With social distancing a part of the norm, you now have the ability to obtain CLE credits from the comforts of your office. A few courses are still being offered with 1.0 CLE for absolutely free. More CLE events, both live and streaming, are forthcoming.

In 2020, you saw our membership donate their time and services for the Pro Bono War Claims Clinic and a special Christmas Charity Drive to aid our homeless population and recovering addicts. Thank you to all our members who participated in these events. For those who missed it, the Elder Justice Center, administered by the Public Defender Service Corporation, is seeking assistance with legal services for our manamko.

Now, as we approach the summer, just a friendly reminder that the new Commission on Lawyer Regulation and Rules for Lawyer Disciplinary Enforcement and Disability Proceedings will go into effect on August 1, 2021.

Congratulations 2021-2023 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.



SUBPOENA REGISTER

NEW DISCIPLINARY RULES

On March 16, 2021, the Supreme Court of Guam issued Promulgation Order No. PRM21-001-01 regarding the adoption of the Guam Rules of Lawyer Disciplinary Enforcement and Disability Proceedings. On March 29, 2021, Supreme Court of Guam Case No. ADC21-002 appointed members of the Commission on Lawyer Regulation.

2020 OUTSTANDING LAW DAY ACTIVITY AWARD

The Guam Bar Association, Judiciary of Guam, and District Court of Guam has been selected by the American Bar Association to receive a Law Day Activity Award for its programming efforts related to the 2020 theme: Your Vote, Your Voice, Our Democracy. Guam was recognized during the ABA's virtual launch for 2021 Law Day on March 3, 2021.

THE PROPERTIES OF PERPETUAL LIGHT

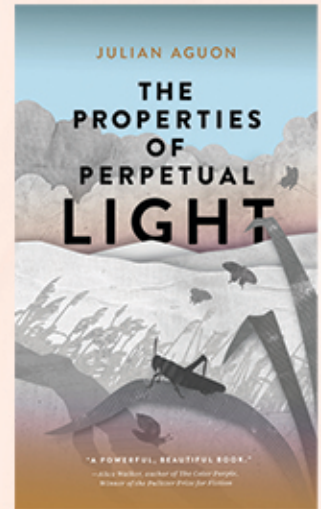
GBA member Julian Aguon's new book *The Properties of Perpetual Light* was released on March 29, 2021. The book is described as a collection of soulful ruminations about love, loss, struggle, resilience, and power. Part memoir, part manifesto, the book is both a coming-of-age story and a call for justice for everyone, and in particular for indigenous peoples. *The Properties of Perpetual Light* is available online and at local bookstores.



GBA FACEMASKS

To ring in the post-pandemic new year, GBA began distribution of reusable face masks to active members in February 2021 and continued through March 2021. The face masks which feature the GBA logo are made by Nakamol Jewelry out of Chicago. They are made from antibacterial fabric with a pocket for filter inserts and can be worn as a lanyard when not in use.

Notice has been sent to active members residing off-island that they may request complimentary face masks from the GBA for a \$5.00 shipping & handling fee. Inactive members may contact the GBA office for information on available face masks.



CLE VIDEO ON-DEMAND PLATFORM

The GBA CLE Video On-Demand Platform went live in October 2020. Members can now browse through a selection of local CLE video recordings, ranging from 50 minutes to 120 minutes.

Simply log on to your Members' Dashboard on the GBA website. Click on the CLE On-Demand link at the top of the dashboard homepage. Browse through the list and click to add videos to your shopping cart. Proceed to the checkout for payment (Mastercard, Visa, Discover, American Express, and PayPal are all accepted). Costs vary based on the length of the CLE and includes a standard online processing fee; some offerings are complimentary for our membership.

Upon purchase, your video will be available to watch instantly from your individual dashboard under My Videos. Note: You may pause or stop the video while watching; however, if you decide to stop the video, you will need to remember where you left off as the video will start from the beginning.



THANK YOU, EDGAR!

February 2021 marked the first time in GBA history that our membership completed both Membership Registration and CLE Certifications online! The Board of Governors wishes to celebrate and appreciate our lone administrative staff member, Edgar Dumlaog, who has been with the GBA since July 2018.

Un Dunkalu na Si Yu'os Ma'ase, Edgar for your hard work and commitment to help our membership transition to a completely online system. Your extra efforts have not gone unnoticed! From taking the lead on our GBA website upgrade, to coordinating online CLEs and events, and for providing personal one-on-one training to our attorney members, we want you to know that you are appreciated.

Bar Tab (2020 Financials)

In addition to the rest of our lives, the Covid-19 pandemic has also caused havoc and delay in the filing of our 2020 financials. The GBA is working diligently to provide our membership with final figures. In the interim, we are providing the following estimates:

2020 DUES REVENUE	2020 NON-DUES REVENUE	2020 EXPENSES
\$99,525.00	\$18,643.00	Not Available

FINANCIAL POSITION 2020 VERSUS 2019 (Not Available)

2020 Holiday Charity Project



On December 23, 2020, the GBA utilized funds intended for our annual holiday party, along with generous monetary and in-kind donations from local businesses and our membership, to purchase essential items and gifts to making this last holiday special for families who experienced hardship and provided them with much needed hope.

Our Santattorney, Jeffrey A. Moots, Esq., helped deliver presents with the Barrigada Fire Department who served as his local sleigh.

Funds were used to purchase essential items including nonperishable food, toiletries, diapers, and infant formula for over 50 families who have taken shelter at the Global Dorm in Maite. In partnership with the Guam Homeless Coalition, the GBA also purchased age-appropriate school workbooks, games, and toys for approximately 55 children, including over 20 under the age of 2. Thanks to the Arriola Law Firm and their donation of five computer desktops, a learning resource center has been established at the Global Dorm.

We are grateful to Data Management Resources, LLC whose generous contribution allowed the GBA to expand our donations of gifts to the children at Latte Treatment Center ("LTC"), Serenity House, and CSS Iya Hami Home. The children at Serenity and LTC include dozens of teenagers with special needs who enjoyed the real Santa bringing them special gifts. They now believe that Santa and the kindness he embodies does exist!

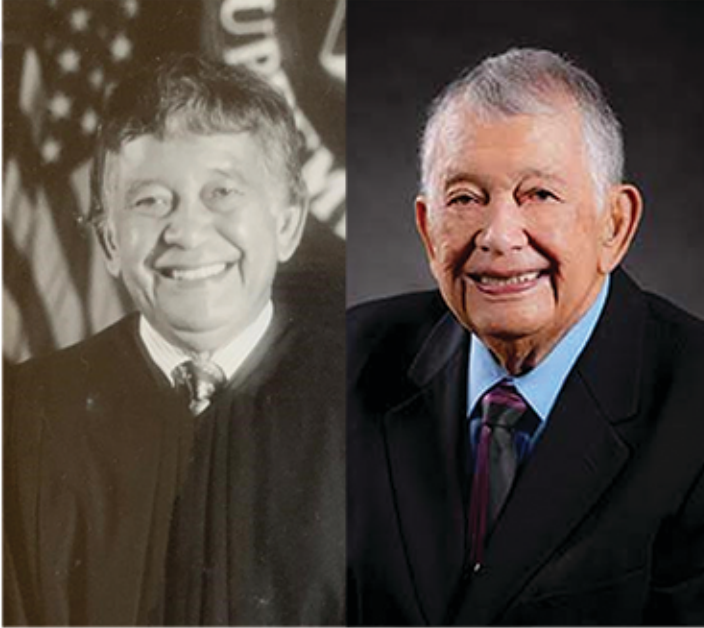
Many thanks to The Law Office of Cynthia V. Ecube, Esq., whose donation of toys, games, coloring books, and children's face masks were much appreciated; to Macy's for their donation of reusable shopping bags and Godiva chocolates; to Cost U Less for their reusable shopping bags; and to our Board members who dedicated their time and energy to shopping for, wrapping, and helping Santa deliver all his gifts.



2020 Holiday Charity Project



Congratulations ON THEIR RETIREMENT



Joaquin C. Arriola

Joaquin C. "Kin" Arriola was a member of the Guam Bar Association for nearly 67 years. In that time, Mr. Arriola represented thousands of clients (both in the government and private sectors), served as President of the Guam Bar Association from 1956 to 1957, and as an Associate Justice of the Supreme Court from 1996 to 2006. Notably, he was the first Guamanian attorney to gain admission to the United States Supreme Court and received the 2014 Hustisia Award and 2017 Judge Cristobal Duenas Excellence Award.

Mr. Arriola's distinguished career in public service also includes serving as a senator and/or Speaker of the 3rd, 4th, 9th, and 10th Guam Legislatures and as Chairman of various boards and commissions.

While Mr. Arriola's achievements are vast, should one ask what he is most proud of, he will say: surviving World War 2 and instilling a sense of community service in his eight children, numerous grandchildren and great grandchildren.

Mr. Arriola's colleagues have consistently described him as unpretentious and straightforward. For those who know Mr. Arriola personally, they will tell you he is an avid golfer, member of the Bagoio Country Club, reader, and fan of James Patterson books. He also unwinds with daily walks, a single glass of wine, fishing, planting, and noon siestas.

Because of Mr. Arriola's contribution to every sector of our island community, inspiring with his legacy of community service, and sharing his powerful World War 2 testimony and stories of Guam's formative years of democracy, young lawyers can carry forward our island's history and the Guamanian people's resilience to future generations.



Honorable Anita A. Sukola

Judge Anita A. Sukola, who was appointed as judge of the Superior Court of Guam in 2002, retired this March after 19 years on the bench and 36 years in government service.

Judge Sukola maintained a private practice for nearly 11 years and was a full-time Assistant Professor at the University of Guam prior to her judicial service. Her public service includes working as the Director of Education, Deputy Director of Education, and attorney at the Public Defender Services Corporation.

Judge Sukola also served as Legal Counsel for the Port Authority of Guam Board of Directors, Chamorro Land Trust Commission, and Staff Attorney to Senator Don Parkinson (17th Guam Legislature).

While on the bench, Judge Sukola presided over Juvenile Drug Court and General Jurisdiction cases. She co-chaired the Judiciary's Juvenile Justice Reform Focus Area on Evidence-Based Practices and the Judiciary's 2016-2019 Strategic Plan Focus Area on Access to Courts and Delivery of Services.

In addition to Judge Sukola's professional accomplishments, she is known as a maintaining a healthy and athletic lifestyle and serving as a mentor to countless young attorneys. Judge Sukola has guided young attorneys and always instructed that while hard work and focus are essential, to truly be a good attorney, one must possess self-respect and respect for others. Countless attorneys appearing before Judge Sukola through the years agree it was not just the judge who was strikingly honest and humble, but the woman behind the robe also maintained those genuine characteristics.

2021 Law Month Activities

The annual Law Day celebration (extended to law months in Guam) kicked off with a Virtual Proclamation & Resolution Signing on April 23, 2021. The 2021 American Bar Association theme is Advancing the Rule of Law Now. Co-sponsored by the Judiciary of Guam, the District Court of Guam, and the Guam Bar Association, the below list of activities and events were designed to engage the community in the celebration of our legal system. Additional information on these activities, virtual mock trial schedules, and more will be circulated by the GBA. You can also visit Guam Law Week on Facebook or contact the GBA office.

SATURDAY APRIL 24	MONDAY APRIL 26	FRIDAY APRIL 30		
13TH ANNUAL RACE JUDICATA -VIRTUAL 5K RUN/WALK/ROLL (APRIL 24 – MAY 16)	JUMP FOR JUSTICE	STATE OF THE JUDICIARY	GBA ANNUAL MEETING	2021 HUSTISIA AWARD CEREMONY
MONDAY MAY 03	SATURDAY MAY 08	THURSDAY MAY 13	SATURDAY MAY 29	SATURDAY JUNE 12
NATURALIZATION CEREMONY	SPECIAL OLYMPICS HAAGAN GAMES	2020 HUSTISIA AWARD CEREMONY & JUSTICE SIGUENZA MEMORIAL	"SECURE THE BLESSINGS OF LIBERTY BY PLANTING!"	GUAM GIRLS SCOUTS DEMOCRACY BADGE VIRTUAL CONFERENCE

Scenes from the Jump for Justice event held at DYA on April 26, 2021



"Secure the Blessings of Liberty by Planting!"

On March 6, 2021, tomato seedlings donated by the Guam Department of Agriculture and distributed in coordination with the Office of the Mayor of Agana Heights were given to students with the challenge to keep their plants healthy, and report on their progress for two months by sharing pictures and videos on the District Court of Guam's Facebook or Instagram pages with the hashtag #guamfuturefarmers2021.

Hafa Adai & Welcome



On September 25, 2020, three new GBA members were admitted to the practice of law at the Supreme Court Virtual Courtroom: Jennifer H. Cornely, Frankie T. Perez, Jr., and Jane A. Webster.

Two attorneys were also admitted under the Temporary Supervised Practice Rule: Jessica A. Lee and Jeremiah B. Luther.

We look forward to your positive contribution to the rule of law!

Maintaining a Professional Image During Zoom Hearings

As court officers, we have a duty to maintain a professional demeanor in order to preserve the dignity, integrity, and respect of the court. While Zoom now allows us to conduct virtual trials and hearings remotely, and at times even from our homes, it is very important that we maintain the same decorum, formality, and respect for the court and with all other participants in the virtual courtroom, just as if we were in the actual courtroom.

Judges will continue to appear in black robes during virtual Zoom hearings. Attorneys and court participants should likewise appear dressed in the same professional manner they would dress and appear in-person in a courtroom. Just as court participants would not wear T-shirts, jeans, hats, and similar clothing in a courtroom, they should also not dress in that manner while they are participating in a remote virtual Zoom hearing.

Some further tips to maintain a professional image during remote virtual hearings:

- Test your video and audio connection and Zoom setup prior to the scheduled hearing, including a test of lighting and camera angles.
- Be conscious of your background. Use a blank wall or select a virtual background available from the Zoom resources. Avoid using your bedroom or other congested, unprofessional backgrounds. Turn off cat filters.
- Speak closely to your microphone.
- Be especially mindful not to talk over others who are speaking.
- Speak and act in the same professional and respectful manner as you would in an actual courtroom.
- Mute your microphone when you are not speaking to avoid creating any extraneous and distracting noises.
- Make sure you have sent proposed and labeled exhibits to the court and opposing counsel prior to the hearing.
- Avoid eating, drinking, or chewing gum during a hearing.
- Working remotely, and from home has its challenges, but avoid interacting with children, pets, third parties, and other distractions during proceedings.
- Wear pants.



ADIOS & FAREWELL



John Patrick "Pat" Mason

GBA Member J. Patrick "Pat" Mason left this world on March 24, 2021, after a life of service to the people of Guam.

Pat received his Bachelor of Science degree with a major in economics from the University of Kansas and Juris Doctor degree from the University of Nebraska. He worked at the Law Office of J. Patrick Mason and served as an administrative law judge for the State of Oregon, Department of Revenue and Department of Labor.

After moving to Guam in 1984, Pat spent nearly 24 years working for the Office of the Attorney General briefly leaving government service in 2004 to become of-counsel for the law firm Carlsmith Ball LLP. In 2007, he returned to the Office of the Attorney General to serve as Deputy Attorney General for both the Solicitor and Civil Litigation Divisions.

Notably, Pat briefed and argued the landmark case, *Ngiraingas v. Sanchez*, 110 S.Ct. 1737 (1990), before the United States Supreme Court. This civil rights action was brought against the Government of Guam for damages of \$100 million. The Supreme Court held neither the Government of Guam nor its officials and employees acting in their official capacities are subject to liability under 42 U.S.C.A. § 1983 actions.

Pat Mason will be remembered for his kindness and the highest degree of professionalism and integrity. He will also be remembered as a quiet, yet thoughtful and forceful advocate at all times for the People of Guam; mentor to some of Guam's finest attorneys; and for his love of Guam.

The GBA extends its deepest condolences to his wife of 52 years, Judy Mason, and the rest of his family. May you rest in peace, Pat.



William D. "Don" Parkinson

GBA Member and former Speaker of the Guam Legislature William D. "Don" Parkinson passed away on August 31, 2020 at the age of 77 while in the Philippines.

Parkinson was born in Idaho and served in the U.S. military during the Vietnam War. He later obtained his Juris Doctor from the University of Idaho. Parkinson was admitted to the State Bar of California on November 25, 1974, and served as a prosecuting attorney in Colfax, Washington.

After moving to Guam from Washington State, Parkinson continued his legal career as staff attorney for the Micronesian Constitutional Convention of 1975. On January 14, 1977, Parkinson was admitted as a member of the GBA prior to the GBA becoming an integrated bar in 1978.

In 1982, Parkinson was elected Senator and served in the 17th to the 23rd Guam Legislature as Speaker and later as Majority Leader. While in office, Parkinson was instrumental in numerous laws that paved the way to subsidize essential power coverage, increase minimum wage in Guam and to make unemployment insurance attainable for the people of Guam.

The GBA extends its deepest condolences to his wife, Marina Parkinson, his seven children, and the rest of his family.

NEW ABA ETHICS OPINION ADDRESSES PROFESSIONAL RESPONSIBILITIES OF VIRTUAL PRACTICE

BY DAVID L. HUDSON JR.

Originally published on March 10, 2021, on the ABA Journal online at

<https://www.abajournal.com/news/article/ethics-opinion-addresses-professional-responsibilities-of-virtual-practice>

Lawyers can practice law virtually but must ensure that they consider various ethical responsibilities related to the duties of competence, diligence, communication, confidentiality and supervision, according to a new opinion released by the ABA's Standing Committee on Professional Responsibility.

Formal Opinion 498, released Wednesday, defines virtual practice as “technologically enabled law practice beyond the traditional brick-and-mortar law firm.” Many more lawyers now practice at home or from a location outside of a traditional law office.

Even so, lawyers engaging in virtual practice must ensure that they adhere to the related duties of competence and diligence under ABA Model Rules 1.1 and 1.3, respectively.

The duty of competence also requires lawyers to stay abreast of “the benefits and risks associated with relevant technology,” as noted in Comment 8 to Model Rule 1.1. Lawyers practicing virtually also must ensure they pursue matters on behalf of clients diligently and without unnecessary delay. There is also a duty of communication under Model Rule 1.4, which requires lawyers to “reasonably consult” with clients and keep them updated about their cases.

Lawyers practicing virtually also must take steps to ensure confidentiality of client information. This often requires lawyers to install “any security-related updates and using strong passwords, antivirus software and encryption.”

When connecting over Wi-Fi, lawyers should consider using virtual private networks. Lawyers need to ensure that virtual meeting or teleconferencing platforms used are secure. “Likewise, any recordings or transcripts should be strongly secured,” the opinion cautions.

In addition to their own virtual work, lawyers practicing remotely retain an ethical responsibilities to supervise subordinate lawyers and nonlawyer assistants under Rules 5.1 and 5.3. Lawyers running virtual practices must exercise managerial authority in such a way as to ensure compliance with the ethical rules. “This duty requires regular interaction and communication with, for example, associates, legal assistants and paralegals.”

The opinion also cautions that there are limits to virtual practices and technology. The lawyer must still be able to write and deposit checks, make electronic transfers and maintain full trust-accounting records. “Finally, although e-filing systems have lessened this concern, litigators must still be able to file and receive pleadings and other court documents,” the opinion reads.

While comprehensive and informative, the opinion notes that it does not address issues involving interstate virtual practice and unauthorized practice of law issues that might arise from such practices.

Fair play for nationals and citizens of unincorporated territories

By Dr. William B. Cleary

Congress not courts define political status of U.S. territories

Congress should consider whether or not to intervene and resolve by federal statutory measures the political questions raised in recent federal court cases, including *Tuaua v. U.S.*, No. 13-5272 (D.C. Cir. 2015)(cert. denied); *Segovia v. U.S.*, 880 F. 3d 384-2018 (cert. denied); *Fitiseanu v. U.S.*, Case No. 1:18-CV-36 (D. Utah Dec. 12, 2019); *U.S. v. Vaello-Madero*, No. 19-1390 (1st Cir. 2020).

In each of these cases, individual Americans have asked federal courts to provide judicial remedies for anomalies, inconsistencies and irrational discrimination in how residents of unincorporated territories are treated under federal territorial law and policy. But why are lawyers in these cases and even members of the U.S. Congress calling on courts to extend the U.S. Constitution as it applies in states to achieve equal access to Supplemental Security Income (SSI) to all territories equally, when Congress can simply pass a law to do so?

The real question for Congress is one of equity: Does the territory want a one size fits all equal treatment on a particular issue? If so, Congress doesn't need to be ordered by a court to provide equal treatment under federal social safety net programs created by statute not the Constitution. Even if ordered by a court, Congress still must find the funding, which is the real political issue courts can't decide.

Lawyers in the cases cited above also are calling for territories to have the same political rights not only as other territories but as states of the union. That includes voting representation in Congress and the Electoral College that is limited by Art. I, Sec. 2 and Art. II, Sec. 1 of the U.S. Constitution to states.

Statutory equity for territories and equal rights of citizenship compared to Americans in the states of the union are two different questions. Fully equal national citizenship can be attained through incorporation into the Union leading to statehood like Hawaii and Alaska in 1959, or independent nationhood like the U.S. Territory of the Philippine Islands in

1946, or independence with revocable free association like FSM, RMI and Palau that does not include U.S. citizenship.

For U.S. citizens, full equality comes only with statehood, and statehood for a territory can include integration into an existing state or newly formed state. But Congress has not exercised its authority to determine disposition of the status of the unincorporated territories, mostly because the territories so far seem to prefer the existing home rule regimes over full integration or independence.

Some territories seem to want autonomy more than one size fits all equal treatment (American Samoa), and other territories appear to want both home rule autonomy and equality with states (Guam). That was tried for 70 years by Puerto Rico, but the U.S. Supreme Court ruling in *Puerto Rico v. Sanchez*, 579 U.S. ___ (2016), confirmed "commonwealth" constitutions Congress authorized in Philippines, Puerto Rico and Northern Mariana Islands continue unincorporated territory status until a territory is incorporated into the union or transitions to independent nationhood.

That's why federal courts so far are entertaining the above referenced lawsuits with a mixture of confusion and concern about whether "fundamental rights" are being respected in the unincorporated territories. So far, any judicial frustration and restlessness because territorial political status questions come visiting courts dressed up as legal claims has not overcome judicial reluctance to decide political questions that Congress lacks the political will to tackle.

Dr. William B. Cleary, Professor of Law, Hiroshima Shudo University. Dr. Cleary is also a former Assistant Attorney General for the Territory of Guam.

SYNOPTIC BRIEFS

DISCLAIMER: The GBA extends its thanks to the Supreme Court of Guam clerks for preparing these case summaries. Readers are reminded, however, that these briefings do not constitute legal advice and should not be relied upon as reference or authority. Please refer to the Court's published opinions.



Guam Police Dep't v. Civil Serv. Comm'n (Charfauros), 2020 Guam 12

On judicial review, the Supreme Court affirmed a decision by the Superior Court to dismiss a verified petition from the Guam Police Department challenging the Civil Service Commission's decision to void its adverse action against Mark C. Charfauros. GPD had demoted Charfauros from the rank of Police Colonel to Police Major. Charfauros appealed that decision and during a merits hearing on the adverse action before the CSC, GPD sought to call Charfauros as its first witness, which the CSC denied. After GPD protested the decision and declined to call its other witnesses, the CSC voided the demotion and determined that GPD did not meet its burden to show clearly and convincingly that its adverse action was correct. In affirming the Superior Court's decision, the Supreme Court held that, unless Guam law provides otherwise, the Guam Rules of Civil Procedure apply to petitions for judicial review. The Supreme Court further held that 9 GCA § 9225 bars a government agency from calling an employee subject to adverse action as a witness until that employee has not testified in his or her own behalf.



Allen v. Richardson, 2020 Guam 13

In a suit involving various intentional and negligence-based torts, the Supreme Court affirmed a dismissal by the Superior Court which concluded that Allen's claims for damages were barred under 7 GCA § 11308 because they were subject to the one-year statute of limitations applicable to claims arising from medical treatment. Allen had initially argued that, because he was bringing a claim for battery, the two-year statute of limitations under 7 GCA § 11306(a) for claims of assault and battery was applicable. The Supreme Court, however, held that whether characterized as a medical malpractice claim or a medical battery claim, Allen's actions were barred by the one-year statute of limitations under 7 GCA § 11308 because his claims for damages arose from Richardson's medical treatment of him, and the underlying suit was filed more than a year after the alleged incident.



DFS L.P. v. A.B. Won Pat Int'l Airport Auth., 2020 Guam 14

This opinion was superseded in its entirety by *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20.



Hannah v. Leon Guerrero, 2020 Guam 15

The Supreme Court vacated an amended judgment by the Superior Court involving jury verdicts related to various *inter vivos* conveyances of real property between parents and their adult children. In the underlying suit, Hannah primarily sought for the

rescission of various deeds of gifts on grounds that her sister had allegedly unduly influenced their parents in executing the powers of attorney that formed the basis for authorizing the disputed deeds. In vacating the amended judgment, the Supreme Court determined that the Superior Court erred in providing the jury with a blanket instruction as to the burden of proof; abused its direction in not allowing Hannah to amend her complaint; and erred in precluding an award of punitive damages after the jury had returned verdicts finding that various tortious acts had occurred. The Supreme Court further held the burden of proof to establish undue influence in a civil action involving a gift or *inter vivos* conveyance of property is by clear and convincing evidence, and when a confidential relationship triggering the presumption of undue influence has been established by clear and convincing evidence, the burden shifts to the opposing party to offer evidence to demonstrate a lack of undue influence.



People v. Titus, 2020 Guam 16

The Supreme Court reversed the Superior Court's decision and order granting Titus's motion to vacate his conviction and withdraw his guilty plea. Titus had initially pleaded guilty to the offense of Theft of Property (as a Third Degree Felony) and was sentenced to three years of imprisonment. He later moved successfully to withdraw his guilty plea based on ineffective assistance of counsel—alleging his counsel failed to warn him of the immigration consequences of his plea. In reversing the decision to vacate his conviction, the Supreme Court held that the Superior Court abused its discretion in granting the motion because Titus did not establish prejudice under the second prong of the *Strickland* test for ineffective assistance of counsel. In doing so, the Supreme Court remanded the matter to the Superior Court to conduct an evidentiary hearing on Titus's claim of ineffective assistance of counsel. The Supreme Court further determined that, for purposes of criminal appellate jurisdiction, post-judgment orders "affecting the substantial rights of the government" may be appealed under 8 GCA § 130.20(a)(3), provided the order in some way affects the judgment or its enforcement or hampers the further prosecution of the particular proceeding in which it is made.



People v. Wia, 2020 Guam 17

Wia, for the first time on appeal, contested the trial judge's competency to preside over the case as the judge's uncle was the Assistant Deputy Attorney General at the Prosecution Division and then was promoted to Chief Prosecutor during the proceedings. Although the judge did not disclose this promotion, it was clearly known to Wia's counsel. The parties had ample time to object to the potentially disqualifying relationship, yet did not. Adopting the "silence-as-waiver" rule for 7 GCA § 6105(b) disqualifications on a case-by-case basis, the Supreme Court found that Wia waived the disqualification by failing to timely object.

SYNOPTIC BRIEFS

The Supreme Court adopted Massachusetts' test for determining when an arrest is "effected" for purposes of proving a resisting arrest charge. Applying this test to the circumstances of Wia's arrest, the evidence was sufficient to prove Wia resisted arrest. The court found no abuse of discretion in the denial of Wia's motion to apply the Justice Safety Valve Act of 2013 during sentencing, an act which allows a judge to depart from mandatory minimum sentences in certain circumstances. Lastly, the court remanded the case with directions to vacate the restitution portion of Wia's sentence, as the failure to include a restitution amount in the judgment meant that Wia effectively owed no restitution.



Aflague v. Moylan ex rel. Estate of Moylan, 2020 Guam 18

The case arose as a dispute among the heirs of an owner of ancestral land. On the basis of a deed from the original owner, the Guam Ancestral Lands Commission awarded the property to one of the heirs in his own name. However, the record contained no evidence that GALC gave notice to the other potentially interested parties. The Supreme Court concluded that the absence of notice to interested parties, as required by statute, would be a due process violation and the underlying agency action would be void irrespective of a statute of limitations. The court also concluded that the trial court erred in failing to join GALC and the Department of Land Management to the suit, while also finding that it was unable to adjudicate the competing claims of title without the agencies' presence. The Supreme Court vacated the trial court's judgment and remanded the case to join GALC and DLM as necessary and indispensable parties.



People v. White, 2020 Guam 19

White appealed his conviction for aggravated assault, seeking reversal because the trial court failed to instruct the jury on the prosecution's burden to disprove White's defense-of-another defense beyond a reasonable doubt. The Supreme Court agreed, finding plain error and reversing and remanding the case for a new trial.



DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth., 2020 Guam 20

This amended opinion on rehearing supersedes 2020 Guam 14. The case arose out of procurement protests by DFS Guam L.P. concerning an RFP for retail concessions at the A.B. Won Pat International Airport. The Supreme Court determined that, in procurement cases in which the Office of Public Accountability and the Public Auditor have recused from hearing the matter, the appeal to the Superior Court should proceed as a "civil action," with no deference provided to the legal or factual conclusions made by the procuring agency in denying the protest. The court held that the Public Auditor and OPA's recusal satisfies the requirement of administrative exhaustion under the Procurement Code, and that when a case is filed under the Procurement Code, the Superior Court must examine each claim separately to determine whether it has satisfied the administrative exhaustion requirement.

The Supreme Court directed the trial court to enter judgment in favor of GIAA on two of DFS's claims because DFS failed to administratively exhaust its claims related to a "success fee" allegedly paid by the winning bidder, Lotte Duty Free, to its consultants.

The court determined the doctrine of equitable tolling did not apply to claims filed under the Procurement Code. The court held that the statutory 14-day window to protest a procurement runs from the date a party first becomes aware, or reasonably should be aware, of the facts underlying a protest. DFS's claims concerning improper gifts from Lotte to GIAA board members were barred as a matter of law because they were untimely protested. Several other claims filed by DFS, however, were held to be timely. The court vacated the award of summary judgment to DFS on its third protest complaint so that issues of timeliness and administrative exhaustion could be considered by the trial court in the first instance.

The Supreme Court affirmed the denial of summary judgment to GIAA on DFS's third protest complaint. Finally, DFS asserted that GIAA had violated the automatic stay provision of the Procurement Code by entering a contract with Lotte while litigation was still pending. The court held that these claims were not moot or otherwise barred.



Joe & Flo's, Inc. v. Gutierrez, 2020 Guam 21

The Supreme Court affirmed the trial court's denial of Gutierrez's motion to dismiss the complaint based on Guam's anti-SLAPP statute, also known as the "Citizen Participation in Government Act" or "CPGA." Joe & Flo's had filed a complaint against Gutierrez for trespass. Gutierrez moved to dismiss, arguing that Joe & Flo's complaint violated his petitioning rights because it was filed in retaliation for his earlier act of calling the police on Joe & Flo's president and for his involvement in a different lawsuit against Joe & Flo's. The court held that Gutierrez failed to meet his prima facie burden under the CPGA because Joe & Flo's trespass claims had a substantial basis other than or in addition to Gutierrez's protected petitioning activities.



Kim v. Min Sun Cha, 2020 Guam 22

The Supreme Court reversed the entry of default judgment against a South Korean resident because the requirements of the Hague Service Convention had not been met. Kim, a U.S. citizen, attempted to serve a Guam divorce complaint on his estranged wife Min Sun Cha, a citizen and resident of South Korea. Kim attempted to serve the action by mail to Cha's last known residence in South Korea and through communication with the South Korean Central Authority. Under the Hague Service Convention, South Korea has objected to service by mail and requires service through its Central Authority. After several failed attempts at service, the Central Authority sent Kim two certificates of non-service. Thus, although Cha received actual notice of the divorce action via mail, she was not served via the Central Authority. Cha did not file an answer,

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and Kim was awarded a default judgment of divorce and primary custody of the parties' child. The Superior Court denied Cha's motion to vacate the default judgment. In reversing the entry of default judgment, the Supreme Court determined that the certificates of non-service constituted a "certificate of any kind" under Article 15 of the Hague Service Convention, which allows entry of default judgment only when "no certificate of any kind" has been received. The court rejected Kim's equitable argument concerning actual notice to Cha, as it ignored that the actual notice was accomplished through service by mail—a method to which South Korea has expressly objected.

the agency's decision to the Superior Court, an action permitted by 5 GCA § 37103(a)(4). The Superior Court dismissed San Agustin's appeal, holding 5 GCA § 37103(a)(4) to violate the Organic Act. The Supreme Court reversed, holding that Guam possesses common law sovereign immunity before and beyond what is provided by the Organic Act. From this principle, the Supreme Court declined to read the Organic Act as a constraint upon the Legislature's power to waive sovereign immunity. Thus, the Supreme Court held that 5 GCA § 37103(a)(4) and its waiver of sovereign immunity in permitting judicial review of executive agency actions did not violate the Organic Act.



M Elec. Corp. v. Phil-Gets (Guam) Int'l Trading Corp., 2020 Guam 23

In a dispute between a construction contractor and a sub-contractor, M Electric Corporation ("MEC") appealed following a bench trial. The Supreme Court affirmed the trial court's conclusion that MEC was not entitled to recover the costs it incurred in paying its employees overtime because the evidence did not prove MEC was ordered to work those overtime hours. The Supreme Court similarly denied MEC's argument that it was entitled to recompense for overtime costs under a *quantum meruit* theory on account of the insufficient evidence that MEC was ordered to work overtime. Finally, the Supreme Court disagreed with MEC's argument that the trial court failed to consider the "time of the essence" and "no damages for delay" clauses in the contract between the parties. After reviewing the record, the Supreme Court determined the trial court properly analyzed these contractual clauses and made non-erroneous factual findings about the effect of these clauses.



"Well, I was bitten by a radioactive lawyer and ended up with the power of attorney."



People v. Aguon, 2020 Guam 24

Following a conviction for First Degree Criminal Sexual Conduct, Aguon asked the Supreme Court to hold the People's evidence insufficient to prove sexual penetration. The Supreme Court disagreed, noting that the circumstantial evidence was sufficient to prove the element of penetration and that medical or expert testimony was not required to sustain the conviction. The court also affirmed the trial court's denial of Aguon's motion for a mistrial based on the introduction of improper evidence. The record showed that the trial court excluded the evidence, offered a curative instruction regarding the excluded evidence, and then offered an additional curative instruction after closing arguments to remind the jury to disregard any evidence that the court had excluded or stricken.



Estate of Gogue v. Pangelinan, 2020 Guam 26

A probate closed since 1952 returned to the Superior Court after the Guam Ancestral Lands Commission recovered the decedent's ancestral property. GALC deeded the property directly to the decedent's six children, presumptively in equal shares. However, under the terms of Guam's Probate Code, the decedent's two youngest children—half-siblings to the older four children—would have been entitled to a larger proportion of the ancestral property than the older children. The Supreme Court reversed the trial court's holding that the Probate Code controlled over the GALC deed. The Supreme Court determined that since the property was not deeded to the decedent's estate, but instead to the six children directly, then the GALC deed was never a part of the decedent's estate and probate distribution did not apply. Additionally, the Supreme Court concluded that the evidence in the record did not satisfy the "clear and convincing" standard necessary to overcome the presumption that the six children were to share equally in the property.



San Agustin v. Mansapit-Shimizu, 2020 Guam 25

San Agustin filed a complaint under Guam's Whistleblower Act, 5 GCA Chapter 37, with the Department of Revenue and Taxation. DRT did not grant San Agustin the relief he desired, so he appealed



Linsangan v. Government of Guam, 2020 Guam 27

Linsangan appealed the Superior Court's dismissal of his petition challenging the legality of actions taken by the Government to control the spread of COVID-19. In his petition, Linsangan sought (1) the release of quarantined passengers who arrived from Manila,

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Philippines on March 19, 2020, claiming they were subject to invidious discrimination, and (2) an order revoking portions of Executive Order Nos. 2020-06 and 2020-07, which suspended sections of the Open Government Law (“OGL”). The Superior Court dismissed the request for the release of quarantined Manila passengers as moot and the OGL claim as both moot and unripe. The Supreme Court affirmed without addressing the legality of the Government’s actions, finding that (1) Linsangan lacked standing to assert the invidious discrimination claim; (2) the discrimination claim was moot, as the passengers in question were released prior to adjudication; and (3) the OGL claim was unripe, as Linsangan failed to allege any specific past or imminent violation.



Bautista v. Torres, 2020 Guam 28

This amended opinion on rehearing supersedes *Bautista v. Torres*, 2019 Guam 18. Plaintiffs Bautista and Sholing (“the Sholings”) appealed the summary judgment granted to defendants Francisco Torres, individually and as special administrator and executor of the Estate of Jesus U. Torres, and Peter F. Perez in a matter related to a 1987 agreement between the Sholing family and the decedent J.U. Torres to share 10% of rents collected from the Pacific Islands Club property in exchange for legal services. The court affirmed the grant of summary judgment for Francisco in full because the claims relating to the 1987 agreement itself were time-barred, and in favor of Perez on three counts of the complaint because the underlying claims were time-barred before any attorney-client relationship existed between the Sholings and Perez. However, the court reversed the summary judgment for Perez as to three other counts because those counts alleged fraud that was related to but did not arise



People v. Aldan, 2020 Guam 29

Aldan appealed his conviction for one count of Theft by Receiving a Motor Vehicle, claiming the prosecution engaged in misconduct by misstating the law and arguing facts not in evidence during closing arguments. Aldan argued that statements that he may have stolen the vehicle and that, if he had, he would be guilty of theft by receiving, were misstatements of the law. Reviewing for harmless error, the court found that the statements did misstate the law but were harmless because they did not affect the verdict or imbue the trial with unfairness. Aldan also challenged statements asking the jury to infer that other items found in the car may have been stolen or used for illegal activities as arguing facts not in evidence. The court found that the statements were not an introduction of new evidence but were logical inferences based on the testimony elicited and therefore did not amount to prosecutorial misconduct.



Paul’s Guam Inc. v. Superior Court (Korasan LLC), 2020 Guam 30

In an ongoing trademark infringement, deceptive trade practices, and tortious interference case between Paul’s Guam Inc. and Korasan LLC dba Moda Gino’s, the Superior Court found Paul’s in contempt after it disobeyed an order to produce financial statements, economic data, and tax returns relied upon by Paul’s expert witness as well as other documents which the court found were reasonably calculated to lead to the discovery of admissible evidence. Thirty-nine days after the contempt order was docketed, Paul’s petitioned for a writ of *certiorari* challenging the contempt finding as having been rendered in excess of the Superior Court’s jurisdiction. Korasan argued this court was without jurisdiction to review because the petition was untimely. The court held that the 30-day limit for filing a notice of appeal in Guam Rule of Appellate Procedure 4(a) would prospectively apply to writ petitions challenging a contempt finding, but it reviewed the merits of the case out of fairness to Paul’s. Because the Superior Court failed to follow the specific notice and procedural requirements for indirect contempt under 7 GCA § 34102(b)-(d), the court annulled the portion of the contempt order finding Paul’s in contempt under 7 GCA § 34102(b) and imposing related fines.



Hemlani v. Melwani, 2020 Guam 31

Kamlesh Hemlani appealed a final judgment dismissing his complaint without prejudice for lack of standing. The Superior Court granted summary judgment for Vasudev Hemlani (“Vashi”), P.D. Hemlani Foundation, Ltd. (“PDHF”), and Radhi P. Hemlani Estate (“Radhi’s Estate”), holding Kamlesh is foreclosed from bringing any action on behalf of the Radhi Pura Trust because he did not have the permission of at least one other co-trustee. The trial court also found Kamlesh lacked standing to challenge a memorandum of settlement from 2011 and the resulting distributions. Vashi, PDHF, and Radhi’s Estate cross-appealed the denial of their motion to expunge the *lis pendens* Kamlesh filed with his complaint. The Supreme Court reversed the judgment dismissing Kamlesh’s complaint for lack of standing because the trust document permits a single trustee to pursue claims of breach of trust and related fiduciary claims against co-trustees and interested third parties, and material issues of fact remained. However, the court affirmed the dismissal of the complaint against the named estates because estates cannot be sued in their own names as they are not independent legal entities. The court affirmed the order denying the motion to expunge the *lis pendens* because a notice of *lis pendens* remains effective until the final determination of the case upon appeal. A petition for rehearing is pending before the court.



Island Eye Ctr., Inc. v. Lombard, 2020 Guam 32

Island Eye Center, Inc. appealed the dismissal of its breach of contract claim and the summary judgment relating to its trade-secret and non-solicitation claims. The trial court dismissed Island Eye Center’s claim that Dr. Lombard violated a non-compete clause contained in an employment agreement between the two parties. The trial court reasoned that the non-compete clause was an unlawful restraint of trade in violation of 18 GCA § 88105. The Supreme Court affirmed, holding the trial court did not err in relying upon California case law when interpreting 18 GCA § 88105 and stating that, like California Business and Professional Code § 16600, Guam’s statute is an expression of public policy for employee mobility. The court concluded that the non-compete clause at issue effected a complete bar to Dr. Lombard’s ability to engage in his profession for 30 months after ending his employment with Island Eye and was thus unlawful and void. The court affirmed the grant of summary judgment to Dr. Lombard on Island Eye’s non-solicitation claim, holding that the non-solicitation clause in the parties’ contract was overbroad and there was no evidence of solicitation. However, the court did not adopt a bright-line rule on the issue of whether non-solicitation agreements are facial violations of 18 GCA § 88105. The court affirmed the grant of summary judgment to Dr. Lombard on Island Eye’s misappropriation of trade secret claim, but it used a different test than the Superior Court.



People v. Reyes, 2020 Guam 33

The Supreme Court upheld Reyes’s conviction for Third and Fourth

Degree Criminal Sexual Conduct over several arguments he raised on appeal. First, the court held that despite instances of prosecutorial misconduct in the form of improper vouching and an incorrect statement of law, the errors did not affect Reyes’s substantial rights or infect the underlying trial with unfairness to make the resulting conviction a denial of due process. Second, the court held that the trial court’s mistake in an oral jury instruction was cured by the corresponding written jury instruction. Third, the court found that the trial court was not required to provide a jury instruction on the defense of voluntary intoxication as the testimony at trial did not reveal that Reyes had a high level of intoxication and where such an instruction was incompatible with Reyes’s defense. Finally, the court determined the trial court did not abuse its discretion in allowing the prosecutor to ask Reyes whether the victim had consensual sex or whether the victim was too intoxicated as this went to the victim’s ability to consent to sexual contact.



Unpingco v. Derry, 2021 Guam 1

In action relating to trespass on real property registered under the Land Title Registration Act, the Supreme Court reversed the grant of summary judgment in favor of Derry, holding that lands registered under the Land Title Registration Act are indefeasible, absent certain limited exceptions, and therefore the statute of limitations under 7 GCA § 11305(b) does not apply. The court reiterated that whether Derry claimed title in the land or was merely trespassing, the indefeasible nature of the title in the registered land granted the owner, Unpingco, the right to seek the removal of any encumbrance which is not listed on the title; in this case, a wall and a fence Derry had erected on Unpingco’s land. The court remanded the action for Unpingco to proceed with his complaint for injunctive relief and damages.



Ecube ex rel. Estate of Hemlani v. RK Inc., 2021 Guam 2

In an action for collection of payments and interest allegedly owed on a loan, the Supreme Court found the trial court erred in relying on certain extrinsic evidence without properly establishing the reliability and accuracy of that evidence. The court held that it was error for the trial court to admit certain spreadsheets under the “summary evidence rule” without inquiring into the records’ admissibility. Determining that the spread sheets were improper summaries, the Supreme Court concluded that the spreadsheets do not fall within a recognized hearsay exception and, as such, the trial court erred in overruling the defendant’s hearsay objections relating to the spreadsheets. The court also concluded it was error for the trial court to perform internal calculations to determine the interest allegedly owed on the loans, and it cautioned the trial court against allowing expertise from outside the courtroom to inform the court’s conclusions on the issue. The court vacated the trial court’s subsequent order of attorney’s fees which determined that neither party could claim attorney’s fees. A petition for rehearing is pending before the court.