

GUAM BAR BRIEF

QUARTERLY
NEWSLETTER

SEPTEMBER 2019
ISSUE NO. 5

Lawyer Well-Being & Duty of Competence

We are moving into the holiday season, which brings celebrations and festive gatherings with family and friends. It can also bring an excess of food and drink, family tensions, and the stress of trying to have a good time while also perhaps having to complete a complex year-end transaction or respond to discovery demands dropped on a client the day before a holiday. The American Bar Association (ABA) initiatives focused on health and well-being are not new.

The mission of the ABA Commission on Lawyer Assistance Programs (CoLAP) is “to assure that every judge, lawyer and law student has access to support and assistance when confronting alcoholism, substance use disorders or mental health issues....” CoLAP cosponsored studies with the Hazelden Betty Ford Foundation and documented the alarming extent to which lawyers and law students grapple with mental health and substance use disorders. In August 2016, CoLAP joined with a collection of entities from within and outside the ABA to create the National Task Force on Lawyer Well-Being (the Task Force). A year later the Task Force culminated its work by publishing its report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, available on the ABA website at:

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/lawyer_well_being_report_final.authcheckdam.pdf

The Task Force defines “lawyer well-being” in its report: We define lawyer well-being as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others. Lawyer well-being is part of a lawyer’s ethical duty of competence. It includes lawyers’ ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. It includes maintaining their own long term well-being. This definition highlights that complete health is not defined solely by the absence of illness; it includes a positive state of wellness.

Here’s a reminder for our profession to work towards a positive state of wellness!



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Law Day Freedom Mixer

Evolving Liberty: Guam 75 years later

In keeping with the American Bar Association 2019 Law Day theme - Free Speech, Free Press, Free Society - and as part of the law week annual festivities, the Guam Bar Association held a social mixer for its members at the Latte of Freedom on May 3, 2019.



Specials thanks to our sponsors who generously donated all alcohol for the event.



Hafa Adai & Welcome



On May 31, 2019, four new GBA members were admitted to the practice of law at the Supreme Court of Guam. Pictured from left to right: Suzane Santiago-Hinkle, Jack Kim, Karlo Dizon, and Kathleen Aguon.



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Subpoena Register

Upcoming CLEs

Pacific Judicial Conference: 2019 Biennial Conference
(17.25 Credit Hours Available)

Hilton Resort Guam - September 16 to 19, 2019

Bankruptcy Seminar: Chapter 11 Fundamentals
District Court of Guam - September 25, 2019

Department of Labor: TBA
Dusit Thani (November 2019)

GBA New Webpage and Designated WiFi

The GBA is excited to announce that it is working on launching a new webpage to include a Member Dashboard that will allow GBA members to control shareable information, research their historical registration information and CLE records, and make online payments.

As a reminder, the GBA has a dedicated password-secured wifi network at the Judiciary of Guam. Search for and select the GBA_Member network. Please call the GBA office at 989-4227 for password information.



Moot Court - Amicus Curiae Foundation

The Amicus Curiae Foundation has reached out to the GBA about co-sharing a moot court event to take place on February 1-2, 2020. Members interested in participating in this event are welcome to contact the GBA office. To learn more about the Amicus Curiae Foundation, visit <https://amicuscf.org>.

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, created an ethical dilemma for Guam practitioners because the sale and use of marijuana is illegal until federal law.

Following a vote of membership taken at the April 30, 2019 annual meeting, the GBA filed a petition in the Supreme Court of Guam to modify the existing Guam Rules of Professional Responsibility to address the potential for disciplinary action.

Help Shape the Next Generation of Bar Examination

GBA members are invited to participate in the National Conference of Bar Examiners (NCBE) Testing Task Force 2019 practice analysis survey. The survey is open to attorneys nationwide and is focused on collecting information about the current job activities of newly licensed lawyers. To participate in the survey, which started on August 1, and learn more about the study, visit <https://www.testingtaskforce.org/2019PASurvey>.

Senior Law Clinic

The GBA's community outreach to our senior citizens is ongoing. Our next informational workshop is scheduled for September 25, 2019 at the Astumbo Senior Center in Dededo. Attorneys who would like to participate and volunteer to present at any upcoming workshop should contact Edgar Dumlao at 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.

Adios & Thank You



To the following GBA members who have retired from the practice of law in 2019.



Frederick A. Black

Frederick A. Black began his career and was admitted to the GBA in 1975. He retired from the Office of the United States Attorneys after 44 years of practice.



Mark E. Cowan

Mark E. Cowan began his career in 1972, was admitted to the GBA in 1973, and retired from the Arriola Law Firm (formerly Arriola, Cowan & Arriola) after 47 years of practice.



Harold F. Parker

Harold F. Parker began his career in 1974, was admitted to the GBA in 1976, and retired from Guam Legal Services Corporation after 45 years of practice.



Victorina M.Y. Renacia

Victorina M.Y. Renacia began her career in 1993, was admitted to the GBA in 1993, and retired from the University of Guam after 26 years of practice.

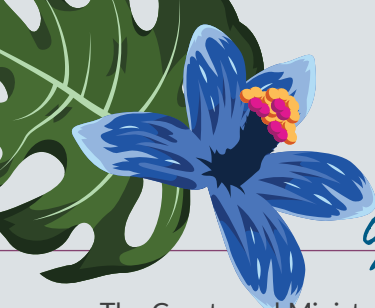


Howard Trapp

Howard Trapp began his career in 1960, was admitted to the GBA in 1962, and retired after the Law Office of Howard G. Trapp after 59 years of practice.

Thank you for your service and contribution to the rule of law.

We wish you the best going forward!



Introducing the Management Team of the Courts and Ministerial Division



The Courts and Ministerial Division (C&M), is essential to court operations and plays a vital role in the judicial process. The C&M staff provides the highest level of service to all judicial officers, attorneys, and the public at two court locations – the Hagåtña Court and the Northern Court Satellite. Some essential duties of the Division include managing and processing all Superior Court case filings; maintaining the custody and control of all Superior Court records; assembling juries; providing court transcription services; preparing court clearances; and processing traffic citations.

Other essential services include the fair and equitable assignment of cases to Superior Court judicial officers, providing support staff for judges' chambers, managing the Court Interpreter Registry Program, and facilitating the use of the Self-Represented Litigants Kiosk by persons representing themselves in court proceedings.

Every day, our staff interacts with many attorneys, and we strive to provide you with the best service, recognizing the critical role we all play in the judicial process. We enjoy meeting and working with the attorneys and their staff, but we also want to share the work of the Division. Our C&M Team has the responsibility of managing a caseload or court program or service and knowing what role they play is helpful for the bar members.

So, when you have a question or need additional assistance about your case or a service we provide, please contact a member of our team.



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Chief Deputy Clerk
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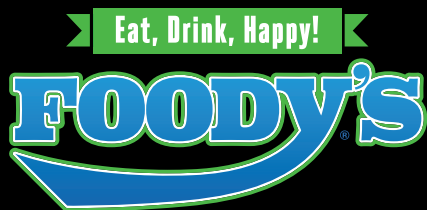
Civil Justice Reform Updates

The Civil Justice Reform Initiative officially launched last October. As part of the reform, the Judiciary announced the introduction of a pilot program to test rule changes and new procedures in an effort to increase and improve access, improve procedural fairness, and reduce cost and delay in civil cases. The deviation from the current Guam Rules of Civil Procedure and the Local Civil Rules of the Superior Court of Guam was necessary in order for the Judiciary to evaluate and develop improvements to existing practices and procedures. Under this pilot program, the Judiciary has seen a significant increase in the closure rate of both civil and domestic cases. Preliminary data has also shown a reduction of delay in litigation as compliance of rules and procedures are closely monitored and enforced to ensure that there are no long periods of inactivity.

The introduction of a Case Cover Sheet for non-criminal cases was also implemented last November. This sheet replaced the former Civil Docketing Statement and is required to assure full statistical representation of the types of cases filed in the Superior Court. The sheet requires that only the primary cause of action found in the complaint filed is specified. If there are other causes of action in addition to the primary, initiating parties may indicate all others on the field below titled "Cause(s) of Action". Because of the need for accurate and complete information, parties and counsels should ensure the accuracy of the information provided and that all fields are completed prior to submission of the form. The Non-Criminal Case Cover Sheet was updated on July 1, 2019. The fillable document is available for download on the Judiciary's website.

Lastly, as part of the reform and to address judicial workloads, Magistrate Judges are presiding over scheduling conferences, initial pre-trial conferences, discovery disputes, pre-trial motions, and settlement efforts in cases under the pilot program. However, requests for settlement conferences, which can be assigned to either a Magistrate Judge or a court Referee, are made available for all civil cases. To avail of a settlement conference, parties should refer to CVR 16.6 to initiate the settlement process or contact the Civil Case Manager for guidance. A Settlement Conference Request Form is also available on the court's website.

The Guam Bar members' feedback and input are important to us. We welcome any comments or suggestions from members of the bar on how we can continue to improve our civil justice system. To learn more about the Judiciary's Civil Justice Reform Initiative or to access, please visit www.guamcourts.org/Civil-Justice-Reform/Civil-Justice-Reform.html or contact the Civil Case Manager, Joanna McDonald at jmcdonald@guamcourts.org or (671) 475-3492.



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iCivics Summer Education Camp

In July of 2019, the District Court of Guam and the Guam Bar Association announced the graduation of 16 students from its first Civics Education Camp for students in grades eight to 12. This program is the first of its kind on Guam and in the nation. Students listened to guest presenters who described their roles in government, and attended field trips to local and federal agencies.

The Civics Education Camp was launched on the 10th anniversary of iCivics, which was founded by the Retired Associate Justice of the Supreme Court of the United States Sandra Day O'Connor in 2009.



NCBP DIVERSITY SCHOLARS

The NCBP Executive Council established the Diversity Scholars Program to enhance its goal to strengthen the alliance between bar associations of all kinds, where information and collaboration is created and shared to the benefit of the organized bar, the profession, and society. Congratulations to the 2019-20 Scholars, who are awarded membership in the NCBP organization for one year, scholarships to the NCBP Annual and Midyear Meetings for one year, and an opportunity to serve on one or more NCBP Committees..

Kristen Browde, President, LGBT Bar Association of Greater NY
Nesha Christian, President-Elect, Virgin Islands Bar Association
Carmen-Nicole Cox, President, Wiley W. Manuel Bar Association
Salvador Davila, President, Hispanic Bar Association of Austin
Maryam Hatcher, President, Greater Washington Area Chapter, Women Lawyers Division, National Bar Association (GWAC)

Andrew Houston, President, California Association of Black Lawyers
Kyleen Hinkle, President, Florida Association for Women Lawyers
Jacqueline Terlaje, President, Guam Bar Association
Rosezetta Upshaw, President-Elect, Black Women Lawyers Association of Los Angeles, Inc.



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FRIDAY, MAY 10
DISTRICT COURT OF GUAM
@ 1130 A.M.

\$50.00 Registration Fee
(Lunch included)

CYBERCRIMES AND INTELLECTUAL PROPERTY

Peter N. Fowler, Senior Counsel for Enforcement, Office of Policy and International Affairs, United States Patent






Law Week Events

Evolving Liberty: Guam 75 Years Later




UNIVERSITY OF GUAM
UNIBESDÁT GUAHAN


PRESIDENTIAL LECTURE SERIES
6 p.m., Thursday, May 2, 2019 | CLASS Lecture Hall

LAW WEEK PANEL PRESENTATION
EVOLVING LIBERTY:
GUAM 75 YEARS LATER


FEATURED PANELISTS:






Joaquin V.E. Manibusan, Jr.
U.S. Magistrate Judge
District Court of Guam



Joaquin C. Arriola, Sr.
Attorney



Leevin Taitano Camacho
Attorney General
of Guam




*Presented in collaboration with the Judiciary of Guam,
District Court of Guam, and Guam Bar Association.*



Law Day Naturalization Ceremony May 2, 2019





THE MEMBERS OF
I MINÁTRETAI SINGRO NA LIHESATURAN GUAHAN
request the honor of your presence at the

Flag Raising Ceremony
Flowering Law Week 2019

Our special guests are the
JUDICIARY OF GUAM, THE GUAM BAR ASSOCIATION,
THE ATTORNEY GENERAL'S OFFICE AND THE PUBLIC DEFENDER'S OFFICE

ON MONDAY, MAY 6, 2019
AT 8:00 IN THE MORNING AT THE
GUAM CONGRESS BUILDING
IN CHALAN SANTO PAPA • HAGÁTRIA, GUAM



Register at Judiciary of Guam, Northern Court Satellite and Hornet Sports
Registration Fees: \$10 per person (\$15.00 on race day)
\$35 for a Family of 4



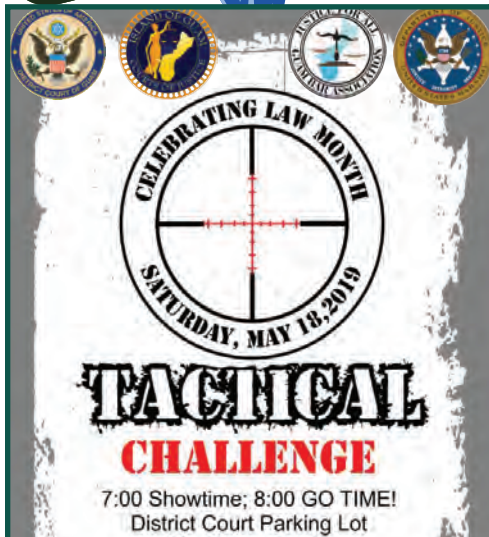
Open to the first 40 Girl Scouts! Please RSVP to 646-5652.





Law Week Events

Evolving Liberty: Guam 75 Years Later



Hafa Adai yan Biba!

Mock Trials

April 29 6:00 pm

Queen v. Alice in Wonderland
Saint Anthony Catholic School
People v. Superman
Agueda Johnston Middle School
I.M.A. Wolf v. Red Riding Hood
Mercy Heights Kindergarten

April 30 6:00 pm

Cinderella v. The Estate of Tremaine
Harry S. Truman
Cinderella v. The Estate of Tremaine
Marilyn Ullrich Elementary
People v. Mary Witch (Hansel & Gretel)
Saint Anthony Catholic School
I.M.A. Wolf v. Red Riding Hood
Mercy Heights Kindergarten

May 1 6:00 pm

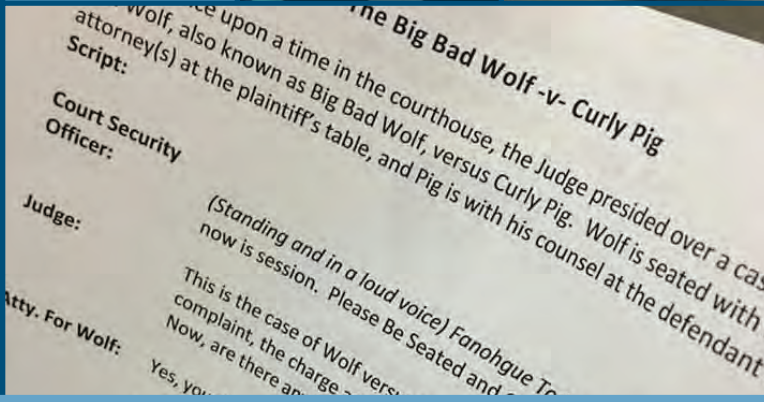
Wicked Witch v. Snow White
Tamuning Elementary School
Queen v. Alice in Wonderland
Tamuning Elementary
People v. Woody (Toy Story)
Price Elementary
People v. John Camacho
Agueda Johnston Middle School
People v. Dorothy Gayle (Wizard of Oz)
Bishop Baumgartner Memorial Catholic School

May 8 6:00 pm

Queen v. Alice in Wonderland
Tamuning Elementary
Cinderella v. The Estate of Tremaine
Agueda Johnston Elementary
People v. Harry Potter
Saint Anthony Catholic School
People v. Harry Potter
Price Elementary
Village of Sheepfold v. Joey Wolfcray
Chad Broder Elementary
People v. Shinoz, Banzai, and Ed (Lion King)
McCool Elementary School

May 9 6:00 pm

Wicked Witch v. Snow White
Bishop Baumgartner Memorial Catholic School
Three Bears v. Goldilocks
Saint Anthony Catholic School
Claude v. The Beast
Saint Francis Catholic School
Queen v. Alice in Wonderland
Gallatin Academy
People v. Shinoz, Banzai, and Ed (Lion King)
McCool Elementary School
Wicked Witch v. Snow White
Bishop Baumgartner Memorial Catholic School



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Synoptic Briefs



People v. Robert, 2019 Guam 2

The Supreme Court affirmed Robert's terrorizing conviction and three separate special allegations for use of a firearm. The court found sufficient evidence to support the terrorizing conviction as a threat may be made non-verbally by an expression of conduct or gestures. The Supreme Court also ruled that a special allegation of possession or use of a deadly weapon may attach to each separate felony conviction.



People v. Ehlert, 2019 Guam 3

The Supreme Court affirmed Ehlert's third degree criminal sexual conduct and attempted third degree CSC convictions. The court found sufficient evidence of surprise may constitute force or coercion to overcome a victim. It also found that the Superior Court did not err in admitting evidence pursuant to Guam Rule of Evidence 413, as the prior acts of sexual misconduct were similar to the crime charged and the jury instruction regarding the evidence was sufficient. Finally, the Supreme Court found the trial court properly instructed the jury on the included offense of attempted third degree CSC.



Dresser-Rand Co. v. Guam Indus. Servs., Inc., 2019 Guam 4

Dresser-Rand obtained a judgment against Guam Shipyard in a Texas proceeding and filed the judgment against Guam Shipyard in the Superior Court of Guam. The Superior Court denied Guam Shipyard's motion to vacate a domesticated judgment. The Supreme Court affirmed, finding that Guam Shipyard was afforded constitutional due process during the Texas proceedings and that it had failed to meet its burden of disproving the presumption that the Texas judgment was entitled to full faith and credit.



Palomo v. Bustamante, 2019 Guam 5

Reviewing a father's appeal from a judgment awarding sole legal and physical custody of a child to the mother, the Supreme Court affirmed, finding the Superior Court did not abuse its discretion because its decision was supported by substantial evidence. The Supreme Court also did not find a violation of Bustamante's right to due process. The court determined that a finding of unfitness was unnecessary, there was no undue delay in ruling on Bustamante's 2013 motion to increase parenting time, and the trial court did not discriminate against the father based on sex. As the father failed to develop the claim below, the court declined to address the father's claim that the child was subjected to "parental alienation syndrome."



In re A.B. Won Pat Int'l Airport Auth., 2019 Guam 6

On appeal from a Superior Court order denying a motion to unseal transcripts of executive sessions of the A.B. Won Pat International Airport Authority, the Supreme Court held that under the Open Government Law, the trial court cannot reseal an executive session transcript once the initial statutory seal has lapsed. However, the Sunshine Act permits a government agency to withhold executive session transcripts pertaining to pending litigation.



People v. Patterson, 2019 Guam 7

The Supreme Court affirmed the defendant's convictions for third degree criminal sexual conduct, finding the evidence was sufficient to support his convictions based on the victim's testimony and telephone records. The court differentiated between types of evidence that potentially show actual innocence and those that create factual questions for the jury.

Synoptic Briefs



People v. Bryan, 2019 Guam 8

After granting a petition for interlocutory review, the Supreme Court found that the defendant's first appearance rights and right to a prompt probable cause determination were violated when he was detained for 28 days post-arrest prior to being brought before a judge of the Superior Court. The court found that the People failed to meet their burden of proving the existence of "a bona fide emergency or an extraordinary circumstance" to justify the excessive delay beyond 48 hours, because evidence of hospitalization alone is insufficient to prove jeopardy to a detainee's health or safety. Finding this particular violation egregious, the Supreme Court remanded the matter with directions to dismiss the indictment with prejudice.



People v. Torre, 2019 Guam 9

The Supreme Court reversed the defendant's convictions for negligent homicide and aggravated assault. The court found that a portion of videotape evidence should have been suppressed because the defendant was not provided a Miranda warning prior to a custodial interrogation. The People also failed to establish that the error was harmless.



People v. Lessard, 2019 Guam 10

In a case involving a dispute over whether alcohol or a head injury caused a driver's impairment, the Supreme Court concluded that prosecutorial misconduct occurred when the prosecutor commented on the defendant's failure to call certain witnesses or present evidence. The prosecutor erroneously turned the "weaker and less satisfactory evidence" instruction limited to the prosecution into an instruction applicable to both parties. This error, however, only affected the defendant's substantial rights with respect to her conviction for driving under the influence. Because the defendant admitted to driving a van with known mechanical defects, the error did not affect the verdict with respect to the reckless driving with property damage charge.



People v. Ramey, 2019 Guam 11

The Supreme Court vacated Ramey's conviction for second degree robbery and remanded for further proceedings, because the trial court plainly erred in not instructing the jury on third degree robbery as an included offense.



Guam YTK Corp. v. Port Auth. of Guam, 2019 Guam 12

On review of an order confirming an arbitration award against the Port Authority, the Supreme Court determined that sovereign immunity is not implicated in case seeking to enforce or vacate an arbitration award. However, the court found that the Superior Court erred in confirming the arbitration award, because an arbitration panel exceeds its authority by enforcing an illegal contract. The contract in this case was illegal because it was a transfer of government-owned land for a period of more than five years without legislative approval.



Port Auth. of Guam v. Civil Serv. Comm'n (Arriola), 2019 Guam 13

In an adverse action appeal, the Supreme Court affirmed in part and reversed in part the Superior Court's decision upholding the CSC's reversal of an adverse action for violation of the 60-day rule. The Supreme Court determined that the separate factual allegations against the employee must be analyzed separately when applying the 60-day rule. As the Port admitted that management knew about several acts of alleged misconduct more than 60 days before issuing a final notice of adverse action, the Supreme Court affirmed the dismissal of those allegations. However, the final notice of adverse action alleged that the employee falsified and backdated a memo-to-file within the 60-day period in an attempt to cover up her previous alleged wrongdoing. The case was remanded for the CSC to consider the factual allegations falling within the 60-day limitations period.



Synoptic Briefs



Ass'n of Apartment Owners of Guam Yamanoi Condo. v. Guam Yamanoi Inc., 2019 Guam 14

In a dispute between a condominium association and a hotel operator occupying the same building, the hotel operator moved to dismiss the association's complaint for failure to arbitrate. While the motion to dismiss was still pending, the Superior Court granted the association's motion for summary judgment, finding the arbitration provision did not prevent the court from resolving the merits. The Supreme Court reversed, finding that the Superior Court should have compelled arbitration after determining a valid arbitration agreement exists. The court also concluded that the association's claims for specific performance and injunctive relief are arbitrable.



Port Auth. of Guam v. Civil Serv. Comm'n (Susuico), 2019 Guam 15

In an adverse action appeal, the Supreme Court concluded that the Port violated the 60-day rule when it fired an accountant 91 days after learning that the employee lacked the required educational qualifications for the position. The Port knew or should have known of the lack of educational qualifications when the CSC held a post-audit hearing and the Port did not contest the CSC's factual findings.



Gov't of Guam v. WSTCO Quality Feed & Supply, 2019 Guam 16

Following a bench trial, the Superior Court found that WSTCO continued to have a leasehold interest in property owned by the Government of Guam. On appeal by the Government, the Supreme Court concluded that WSTCO's option to renew the lease expired when it failed to timely serve its notice of renewal. The court further found that the Government did not waive its right to enforce the timely notice requirement, even though it had waived it in prior years. In the year the Government terminated the contract, it provided prior notice to WSTCO of its intent to terminate and refused to accept the late rent payments.

Power Act Summit

On August 30, 2019, the District Court of Guam in partnership with the Guam Bar Association and the Office of the Attorney General organized the Power Act Summit; a CLE encouraging our membership to provide pro bono legal services for domestic violence victims. Presentations were made by organizations that provide critical services and advocacy to victims of domestic violence, identifying areas where pro bono services are needed. A presentation on Unbundled Legal Services was also made by Ethics Prosecutor, Alberto Tolentino.

Unbundled legal services, also known as limited scope representation and discrete task representation, is a method of legal representation in which an attorney and client agree to limit the scope of the attorney's involvement in a lawsuit or other legal action, leaving responsibility for those other aspects of the case to the client in order to save the client money and give them more control.

