

GUAM BAR BRIEF

AUGUST 2022
ISSUE NO. 9

QUARTERLY
NEWSLETTER

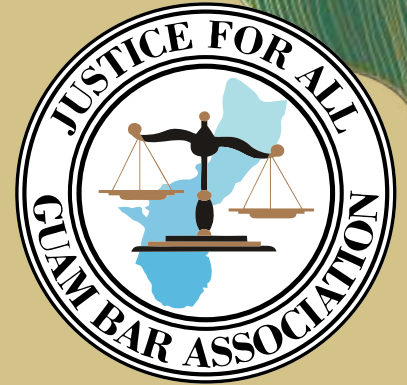
2022 PRESIDENT'S REPORT

On May 5, 2022, we celebrated the Grand Opening of the new GBA Headquarters located at 392 West O'Brien Drive in Hagåtña, a two story 1,600 square foot stand-alone building. The GBA entered a 5-year lease with an additional, optional 5-year term. We anticipate remaining in this new space until 2033. Two meeting rooms are available for use by our active membership.

Mañuelu (formerly Big Brothers) and the Chode Family have generously agreed to provide us with a wall canvas and artist for beautification of the wall located inside the GBA Headquarter gates.

Our current membership constitutes: 285 Active Members, 13 Temporary Active Members, and 130 Inactive Members. Nearly 40% of our Active Membership is 60 years or older. To address concerns over the future of our legal community, the GBA Board is considering the initiation of a scholarship program with the hopes of providing aid for law school students with the intent and commitment to return to practice law in Guam. This program is in its infancy stages as we seek to collaborate with the Court, in addition to other recruitment efforts.

In 2022, the GBA contributed \$36,000 to the Judiciary of Guam to assist the Regulatory Counsel and Commission. Other updates including the recent passage of Resolution No. 404 by the ABA House of Delegates can be found in the Subpoena Register section of this newsletter. Information on the upcoming Joint Annual District Court of Guam and Biennial Pacific Judicial Council Conference (Sept. 18 to 21), the Oceanic Pacific Judicial Conference (Sept. 22 to 23), and the Launch of the Bankruptcy Academy (Sept. 23) is located on the back cover. These are great CLE and networking opportunities for our membership. Members are also welcome to contact the GBA office with any questions.



WHAT'S INSIDE

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- **2022 GBA Annual Meeting**
- **Hafa Adai & Welcome**
- **Adios & Farewell**
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- **Supreme Court Synoptic Briefs**



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SUBPOENA REGISTER

IP&E SHELL GAS STATION PARTNERSHIP

Active members are eligible to receive a gas discount at all Guam Shell gas stations which provides members with a \$0.38 discount off each gallon of gas on all fuel grade options. Contact the GBA office for more information.

2021 ABA LAW DAY AWARD

The Guam Law Month Committee comprised of the Judiciary of Guam, the District Court of Guam, and the Guam Bar Association was recognized by the American Bar Association and awarded the prestigious 2021 ABA Law Day Outstanding Activity Award for Best Public Program. This is the 9th time the ABA has bestowed this award honoring Guam's Law Month Program in the last 14 years. The Guam Law Month Committee was officially recognized during the ABA 2022 Virtual Launch held on March 9.

PARTNERSHIP WITH PREMIER HOTELS & RESTAURANTS CLUB

Active members are eligible to sign up for discounted PHR Club membership which provides hotel and restaurant discounts at Ken Corp. hotels including The Tsubaki Towers, Hyatt Regency Guam, Hilton Guam Resort and Spa, and Hotel Nikko Guam, in addition to a discount on golf packages. Contact the GBA office for more information.

APPROVAL OF RESOLUTION NO. 404 BY THE ABA HOUSE OF DELEGATES AS ABA POLICY AT THE 2022 ANNUAL MEETING

The Resolution, stated below, was introduced by the New York State Bar Association and U.S. Virgin Islands Bar Association and received the support of all the U.S. territories. The Guam Bar Association represented by Joaquin C. Arriola, Jr. endorsed and supported the Resolution at the Meeting of the House.

RESOLVED, That the American Bar Association supports the efforts to restore the rights, liberties, and protections provided by the United States Constitution to the people of the United States territories, so that they are afforded the same rights, liberties, and protections as the people of the states;

FURTHER RESOLVED, That the American Bar Association opposes the "territorial incorporation doctrine" established by the Insular Cases, as contrary to the principles enunciated by the United States Constitution and subsequent civil rights jurisprudence;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation that provides the people of the United States territories the same rights, liberties, and protections as those afforded to the people of the states; and

FURTHER RESOLVED, That this resolution shall not be construed to modify or otherwise infringe upon any treaty, covenant, or other agreement between the United States and a territory.



2021 GIFT OF THANKS

Through generous support and donations, both monetary and in-kind, the GBA was able to spread the holiday cheer to multiple families in need at the Alee Shelter, Serenity House, and Latte Treatment Center in time for Thanksgiving. We were able to bring smiles to around 25 children, ranging in age from just a few months through teenage years, by fulfilling their special wishes for shoes, toiletries, sports balls, games, make up and/or fake eyelashes! Donated toys were also shared with youth at the Guam Behavioral Health and

Wellness Center. On December 21, 2021, the GBA delivered requested clothing, living, and hygiene essentials to our manâmkô' at St. Dominic's Senior Care Home. We also provided a monetary donation to Harvest House who arranged stocking stuffers for over 500 foster children wishes.

The GBA did not hold a holiday party in 2021 in lieu of donation to this effort. Si Yu'os Ma'åse for supporting our community!



HAFA ADAI & WELCOME

The following new members were admitted to Guam Bar Association.
We look forward to your positive contribution to the rule of law!

MAY 7, 2021

Jeremiah Luther

MARCH 25, 2022

Matthew Shuck (Temporary Active)

MAY 20, 2022

Leah M. Diaz-Aguon

Siyan Hu

Daniel Mensching

Yoshihito Tada

OCTOBER 12, 2021

Grant Olan (Temporary Active)

JANUARY 20, 2022

Haig Huynh

Darlene R. Balagot

Cheerful Catunao (Temporary Active)

OCTOBER 29, 2021

Isa J.B. Baza

Kristine B. Borja

Stacy C. Salas

Peter J. Santos

Alexander K. Shell



ADIOS & FAREWELL



**HONORABLE
RICHARD H. BENSON**
FEBRUARY 10, 1926 –
NOVEMBER 17, 2021

Judge Benson became a member of the Guam Bar Association, served as judge of the Island Court in 1970, and judge of the Superior Court of Guam in 1974. He resigned in 1981 to become the first Associate Justice of the Federated States of Micronesia Supreme Court and helped develop Micronesia's court system. Judge Benson's dedication to the justice system continued after his retirement from the FSM Supreme Court in 2001. He returned to Guam and served as a Judge Pro Tempore of the Superior Court of Guam and Justice Pro Tempore of the Supreme Court of Guam, in addition to serving in other Micronesia courts. He mediated more than 50 cases with Inafa' Maolek and, during its existence, Judge Benson also mediated and arbitrated cases for the Guam International Arbitration Center. In 2012, Judge Benson received the Hustisia Award in recognition of his significant contributions to improving the administration of justice.

With quiet respect and professionalism, Judge Benson impressed upon attorneys the ability to remain courteous in litigation. He possessed the unique ability to disarm parties in even the most contentious of cases and foster mutual professionalism.

Judge Benson's legacy extends beyond the sum of his professional achievements. Throughout his life, he was not only an accomplished jurist and brilliant mind, but an incredibly kind, unpretentious individual and promoter of racial equality. He was also deeply devoted to the Bahá'í Faith.



**JOAQUIN C.
ARRIOLA, SR.**
DECEMBER 29, 1925 –
MAY 4, 2022

Affectionally known as "Kin" by his colleagues, friends, and family members, Mr. Arriola was a trailblazer in the legal field with nearly 70 years of practice before his retirement last year; nearly 67 of those years as a member of the GBA.

Mr. Arriola represented thousands of clients 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, the 2017 Judge Cristobal Duenas Excellence Award, and a Judicial Council Resolution commemorating his retirement in 2021.

He also had a distinguished career in the Guam Legislature, serving as Senator during the 3rd and 4th Guam Legislatures (1956-1959) and Speaker during the 9th and 10th Guam Legislatures (1967-1970).

While Mr. Arriola's achievements were quite extensive, it was well known that he was most proud of the Guamanian people's resolve during World War II and of his family, his eight children, numerous grandchildren, and great grandchildren.



JAMES M. MAHER
OCTOBER 23, 1955 - MAY 29, 2022

More commonly known as Jim, James M. Maher was born in Newport, Oregon and a 1979 graduate of Oregon State University. In 1985, he obtained his Juris Doctor from Golden Gate University School of Law in California and was admitted to the Guam Bar Association the following year. Attorney Maher was also admitted to practice in California, the Republic of Palau, and the CNMI. Although he previously lived and worked in Japan and Germany, Attorney Maher made Guam his island home.

He served as an Associate Public Defender from 1986 until 1990, when he became a principal in the law firm of Maher & Thompson until 2013. In recent years, Attorney Maher practiced as a solo practitioner. He was a passionate and fearless advocate for both indigent and private clients and ran a successful civil litigation practice. Attorney Maher also served as neutral mediator with Pacific Arbitration & Mediation Services, Inc. For over 36 years, Attorney Maher dedicated his life to helping numerous island residents with their legal concerns and contributing to the rule of law.

2022 LAW MONTH ACTIVITIES

Toward a More Perfect Union: The Constitution in Times of Change

14TH ANNUAL RACE JUDICATA

Hafa Adai! 14th Annual Race Judicata 5k
Carabao
Run, Walk & Roll
Saturday, May 14, 2022 (5am show / 6am go)
Judiciary of Guam (Hagatna)
Dry fit shirt for first 300 finishers
Registration: \$15 @ guamtime.net @ Hornet Sports
Portion of Proceeds to Benefit: Lighthouse Recovery Center
FREE Carabao Rides
Organized by:
GUAM BAR ASSOCIATION



2022 LAW MONTH ACTIVITIES

COLORING, ART & ESSAY AWARD WINNERS



SPECIAL OLYMPICS



2022 LAW MONTH ACTIVITIES

JUSTICE PATCH

GUAM GIRL SCOUTS
IN PARTNERSHIP WITH
District Court of Guam, Judiciary of Guam, and the
Guam Bar Association



**2022 JUSTICE
PATCH EVENT**

Saturday, May 7
District Court of Guam, Hagatna

Hosted by Kyle Mandapat
Join us for raffles and giveaways

EARN AND RECEIVE YOUR JUSTICE PATCH AT THIS EVENT

- ✓ Tour the Courthouse
- ✓ Meet a Judge
- ✓ Meet a Lawyer
- ✓ Learn about Law
- ✓ Meet a Law Enforcement Officer

Due to capacity restrictions, space is limited. Register today!

✉ guamgirlscout@gmail.com ☎ 646-5652   [@guamgirlscouts](https://www.instagram.com/guamgirlscouts)

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2022 LAW MONTH ACTIVITIES

PLANTING CONTEST

Chief Judge Frances Tydingco-Gatewood,
District Court of Guam;
Chief Justice F. Philip Carbullido,
Judiciary of Guam;
Attorney Jacqueline T. Terlaje, President, Guam Bar Association;
and Guam Department of Agriculture announce the
2022 Law Month Plant A Garden Contest!



PLANTING TOWARD A MORE PERFECT UNION

Celebrating Law Month 2022

Contact the District Court of Guam, if your school would like more information, or if you would like to register a team to represent your school: 671-686-1332 or 671-969-4494. Open to all schools and grade levels; schools will compete with one another to plant a garden consisting of eggplants (short eggplants); and pink and red tomatoes. Each school can register up to three teams per school. Teams must include a minimum of 2 people and must represent a school - a team can consist of friends, a classroom, a club, a students' family, a group of administrators, a Parent Teacher Organization/Association, etc.

Whichever garden/team has "The Most Harvest" (combined eggplants and tomatoes), will win \$500 cash. There will be other prizes awarded to the second place and third place winners of The Most Harvest.



Rules are attached. You may contact
Guam Department of Agriculture for planting/farming tips:
671-300-7967 or 671-300-7974

#GuamFutureFarmers2022



THE DISTRICT COURT OF GUAM,
JUDICIARY OF GUAM,
GUAM BAR ASSOCIATION
AND DEPARTMENT OF YOUTH AFFAIRS
PRESENTS

JUMP JUSTICE

Calling Judicial Officers & Guam Bar Association Members for exercise warm-up!

Monday | May 9, 2022
9:00 AM - 11:00 AM
Department of Youth Affairs

Hafa Adaiyan Bibay

Mock Trials

2022 Schedule

| |
|---|
| <p>Monday, May 9, 2022, 6:00 PM School and Play Title</p> <p>State of Orce-Upona Iime v. Anita B. Darling and Sgt. Alie Tibos (101 Dalmations) Presented by: Adacso Elementary School</p> |
| <p>Tuesday, May 10, 2022, 6:00 PM School and Play Title</p> <p>Proseur Dorothy Saker (Wizard of Oz) Presented by: Agueda Johnston Middle School</p> |
| <p>Thursday, May 12, 2022, 6:00 PM School and Play Title</p> <p>Peoplev, Iarzan Presented by: Agueda Johnston Middle School</p> |
| <p>Friday, May 13, 2022, 6:00 PM School and Play Title</p> <p>People v. Mary Wich (Hansel & Gretel) Presented by: Adacso Elementary School</p> <p>People v. Shermi, Basza, and Edil (Lion King) Presented by: Agueda Johnston Middle School</p> |

LAW WEEK

SYNOPTIC BRIEFS

Disclaimer: The GBA extends its thanks to the Supreme Court of Guam clerks for preparing these summaries of Supreme Court Opinions. 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.



People v. Nego, 2021 Guam 3

Nego appealed his convictions for a series of crimes, including Attempted Violation of a Court Order, and the Supreme Court affirmed. First, Nego asserted a discovery violation because the People provided police photographs to Nego after the discovery deadline. On appeal, the parties did not contest that the prosecution itself received the photographs late due to GPD not properly attaching them to a report. The Supreme Court applied the discovery violation factors articulated in *People v. Tuncap*, 1998 Guam 13, and found the trial court did not abuse its discretion in admitting the evidence despite the violation. On appeal, Nego failed to sufficiently articulate a prejudice the delay caused, and it was reasonable to find the admission inconsequential as the photos mirrored similar testimony. Further, the court noted its role is to answer specific evidence issues in each case and held that the trial court is better suited to address the endemic discovery errors claimed by Nego. Additionally, as a matter of first impression, the court also held the trial court did not abuse its discretion in instructing the jury that it could convict for an “attempt” crime even if Nego completed the act. The court followed the Model Penal Code and the majority rule in *United States v. Rivera-Relle*, 333 F.3d 914 (9th Cir. 2003), which avoids the “strange” possibility that a defendant could avoid conviction by being “too guilty.”



Port Auth. of Guam v. Civil Serv. Comm’n (Castro), 2021 Guam 4

After the Port Authority of Guam terminated Castro’s employment, the Civil Service Commission (CSC) found in favor of the Port but exercised its statutory discretion to reduce Castro’s penalty from termination to the “most severe demotion” possible, which according to the CSC was a demotion to the “Guard” position.



Palmer v. Mariana Stones Corp., 2021 Guam 5

Palmer leased land to Mariana Stones Corporation (MSC) to extract minerals thereon, but MSC later learned they could not access the land except by entering through the Guam Wildlife Refuge and by obtaining special federal permits. MSC eventually ceased to use the land and then failed to pay Palmer in accordance with the lease. At trial for breach of contract, MSC presented, inter alia, three affirmative defenses: frustration of purpose, impossibility, and impracticability, all of which were rejected by the trial court. After Palmer prevailed at trial, MSC appealed. The Supreme Court agreed with the trial court’s holdings that MSC failed to properly plead the defenses of force majeure and failure to mitigate, thereby waiving

those defenses, and that MSC abandoned its defense of “intervening and superseding causes outside and beyond MSC’s control” by failing to include these defenses in its opposition to summary judgment. The court also agreed with the trial court that MSC failed to prove its frustration of purpose and impracticability defenses at trial. Finally, the court found no abuse of discretion in the trial court’s denial of MSC’s motion to amend its pleading because the motion was untimely and was without good cause.



In re Request of Leon Guerrero, I Maga’hågan Guåhan, Relative to the Power of the Executive Branch to Establish, Maintain, and Operate Quarantine Facilities in Guam and to Promulgate Quarantine and Sanitation Regulations for the Protection of Guam Against the Importation and Spread of Disease, 2021 Guam 6

During the COVID-19 pandemic, Governor Lou Leon Guerrero certified a series of questions to the Guam Supreme Court regarding the *Islan Guåhan* Emergency Health Powers Act (“EHPA”) and the separation of powers between the executive and legislative branch in administering quarantine law. The Supreme Court first held that under the plain language of the Organic Act and persuasive case law, the Governor’s power over quarantine and regulation “take[s] precedence over legislative enactments of quarantine law.”

Under that principle, the court examined sections 19604 and 19605 of the EHPA, each of which the government asserted were encroachment on the governor’s power to set quarantine policy. The court held that section 19604—setting forth “general principles” that the executive branch must follow when isolating or quarantining individuals—did not improperly “impinge on the Governor’s quarantine duties,” but held that section 19605, which set forth “specific procedures,” did impinge on the Governor’s power. Thus, the court held that section 19604 was organic, but section 19605 was inorganic.

By invalidating section 19605, and by construing section 19604 to set forth only “general principles” that the executive branch must follow, the court rejected the premise that litigants have a statutory right to challenge their quarantine requirements under the EHPA. But the court explained that while such challenges are not available as a statutory matter, constitutional challenges to quarantine requirements remain available to litigants. The court explained that such constitutional challenges fall into two distinct categories which must be analyzed differently. Where the challenge is to “neutral and generally applicable regulations to protect public health,” the challenge should be analyzed under the standard of *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). By contrast, where the challenge involves a law or regulation “not neutral or generally applicable,” it is subject to constitutional strict scrutiny.

Finally, notwithstanding the principles above, the court recognized that the courts of Guam may have some authority to modify a quarantine order issued by the executive branch: the courts may review quarantine orders for “arbitrariness, capriciousness, or abuse of discretion.” This limited judicial review, analyzing the quarantine order on these bases, would not constitute an encroachment by the judicial branch onto the policymaking power of the executive branch, and thus would not offend separation of powers principles.

SYNOPTIC BRIEFS



Western Sales Trading Co. v. Genpro Int'l, Inc. (Guam), 2021 Guam 7

Western Sales Trading Company (WSTCO) was owed a debt by 7D Food International, Inc. that WSTCO had been unable to collect. WSTCO then sought, under Guam's "Protection Against Recalcitrant Judgment Debtors" statute, 7 GCA § 23401 et seq. ("turnover statute"), to compel another company—Genpro International, Inc.—to turnover to WSTCO dried mangoes that Genpro had purchased from 7D Food. The trial court granted WSTCO's request under the turnover statute. Genpro appealed, arguing the turnover statute was unconstitutional under the Takings Clause of the Fifth Amendment. The Supreme Court agreed, first holding that the statute "facilitates a government taking" and constitutes "state action." Under United States Supreme Court precedent, such a "taking" is constitutional only if the property is taken for a "public use" and if "just compensation is paid" to the property owner. The Guam Supreme Court concluded that the turnover statute satisfied neither requirement: the turnover statute benefitted only "select private individuals" rather than the public as a whole, and it failed to provide an appropriate method for calculating the value of the assets seized. Thus, because the taking was unconstitutional and inorganic, the court reversed the trial court's judgment and remanded the matter for dismissal.



People v. Yerten, 2021 Guam 8

Yerten appealed his conviction of one count of Driving While Impaired (as a Misdemeanor), challenging the trial court's refusal to rule on a Motion to Suppress filed after the court's designated motions deadline. Yerten argued that a de novo review of the motion would show that the police lacked reasonable suspicion to stop Yerten's vehicle, requiring suppression of all evidence stemming from the traffic stop.

The Supreme Court disagreed, finding that the trial court did not abuse its discretion in declining to hear the untimely motion to suppress because the defendant had failed to file his motion before the court's unambiguous motions deadline, failed to request an extension, and failed to show good cause as to why the motion was not timely. Furthermore, reviewing the record de novo, the court found that the arresting officer had reasonable suspicion to stop Yerten's vehicle, and so the trial court did not err in admitting evidence stemming from the stop.



People v. Cepeda, 2021 Guam 9

Cepeda appealed his conviction of Second Degree Robbery with a Special Allegation of Possession or Use of a Deadly Weapon in the Commission of a Felony, and Theft of Property. The Supreme Court affirmed. Regarding the sufficiency of the evidence, the court held that the victim did not need to testify to satisfy the elements of the crimes charged and that circumstantial evidence was sufficient to support the conviction. Cepeda's rights to due process and confrontation were not violated when the trial court admitted the testimony of an officer and exhibits that referenced confiscated property as belonging to the victim. Relatedly, testimony by the officer relating to ownership of the stolen items did not amount to hearsay, and admitting the evidence was not an abuse of discretion. Although the prosecution made certain comments during closing arguments, they did not violate the "Golden Rule" or Cepeda's Fifth Amendment right against self-incrimination, nor did they inappropriately "vouch" for absent witnesses. The court held that the prosecutor made egregious comments about Guam's sense of community and tourism which were calculated to inflame the prejudices of the jury, but that there was more than sufficient evidence to support the conviction, and so the comments were not the determining factor in the jury's guilty verdict.

SYNOPTIC BRIEFS



People v. Cruz, 2021 Guam 10

The People appealed the trial court's decision and order granting Cruz's motion to dismiss felony animal abuse/cruelty charges. The Supreme Court reversed the dismissal, holding that the plain meaning of 9 GCA § 70.10.1(a)(1), as it existed at that time, made it a felony to cause serious physical injury to an animal whether or not the animal died because of its injuries. Justice Maraman dissented, instead agreeing with the trial court's conclusion that section 70.10.1(a)(1) is inapplicable where the animal dies as a result of serious physical injury. The court subsequently denied Cruz's petition for rehearing.



Harper v. Min, 2021 Guam 11

The case arose from the fraudulent conveyance of real property, but the Supreme Court did not address the merits of the issues because Appellants had forfeited their challenges. The Supreme Court declined to review the trial court's indemnification rulings because Appellants had not properly challenged the trial court's rationale. The court also declined to review the imposition of alternative liability rather than joint and several liability because Appellants failed to preserve the issue. Cross-Appellant raised two additional issues on cross-appeal regarding punitive damages and post-judgment attorney's fees and court costs, but these were deemed moot in light of a settlement between the parties. The trial court's judgment was therefore affirmed.



People v. Santos, 2021 Guam 12

Santos appealed his conviction of First Degree Criminal Sexual Conduct (CSC) and Second Degree CSC. The Supreme Court affirmed. The trial court had not abused its discretion in qualifying a nurse as an expert in sexual assault nurse examination.

Moreover, that the genital examination performed revealed no physical injuries or evidence of penetration did not render the nurse's testimony unhelpful to the trier of fact as required by Guam Rule of Evidence (GRE) 702. The nurse's testimony about two scholarly articles fell within the learned treatise hearsay exception, but the trial court was rebuked for several deficiencies in the development of the record and application of the legal standards set by the Guam Rules of Evidence and Supreme Court precedent. The trial court did not commit plain error in admitting testimony of prior incidents of uncharged sexual conduct under GRE 413. Although the trial court erred in failing to perform a "searching inquiry" required under the Supreme Court's previous rulings or the balancing required under GRE 403, Santos suffered no violation of his substantial rights as a result of the errors. The court found that Santos had waived his right to appeal the trial court's decision to deny the People's motion for mistrial based on an outburst by the victim in the presence of the jury because defense counsel at trial advocated against a grant of mistrial. Finally, the People's comments during closing arguments regarding his lack of alibi did not amount to prosecutorial misconduct in violation of Santos's rights.



People v. Tfung, 2021 Guam 13

Tfung appealed his convictions of Terrorizing with a Special Allegation of Possession or Use of a Deadly Weapon in the Commission of a Felony, and Assault. Tfung argued Guam's terrorizing statute is unconstitutionally vague, and there was insufficient evidence to support his convictions. Tfung also argued the statute's overly broad and imprecise language had the effect of creating arbitrary and discriminatory enforcement by law enforcement.

Title 9 GCA § 19.60, the terrorizing statute, is not unconstitutionally vague because the plain language of the statute establishes a standard of conduct and requires an overt act. The court held the statute's elements of requiring an overt act that places the

SYNOPTIC BRIEFS

threatened person in “reasonable fear” gives law enforcement appropriate guidelines for enforcing the law. Based on the testimony presented at trial, the court held there was sufficient evidence to affirm Tfung’s convictions.



People v. Song, 2021 Guam 14

Song appealed his convictions of Delivery of a Schedule II Controlled Substance and Possession of a Schedule II Controlled Substance, that is, an amphetamine-based substance in violation of 9 GCA §§ 67.401.1(a)(1) and (b)(1). He argued there was insufficient evidence to support his convictions because the prosecution did not present physical evidence that demonstrated he possessed an amphetamine-based substance. Despite the prosecution’s lack of physical or scientific evidence, the court held the circumstantial evidence presented at trial—witness testimony about the events in question—provided sufficient evidence to affirm his convictions.



In re Guardianship of Moylan, 2021 Guam 15

Richard Moylan appealed the trial court’s appointment of Lina Leialoha Moylan Alston as the limited guardian of their mother’s estate. Richard alleged Leialoha did not properly serve notice of the guardianship hearing on Mrs. Moylan. He also raised arguments concerning the trial court’s authority to grant a guardian only partial authority over a ward’s estate and issue a surety bond for less than the ward’s estate. Based on allegations of misconduct, he argued the trial court erred in appointing Leialoha the special guardian of Mrs. Moylan’s estate.

The court rejected these arguments but remanded the case for further proceedings. The Supreme Court held the trial court abused its discretion in failing to appoint a guardian for the remainder of Mrs. Moylan’s estate.



People v. Simiron, 2021 Guam 16

Simiron appealed his convictions of Murder, Manslaughter, Aggravated Assault, Theft of a Motor Vehicle, Aggravated Assault, and misdemeanor Assault. Simiron argued the trial court erred in failing to properly issue a defense-of-another instruction and abused its discretion in failing to apply the intoxication instruction to his Murder and Manslaughter charge. The trial court erred when it issued the defense-of-another instruction, but this did not warrant reversal because Simiron failed to satisfy the four prongs of plain error review. The mens rea for Murder and Manslaughter is recklessness; thus, voluntary intoxication could not be used as a defense, and the trial court acted properly when it excluded the intoxication instruction. The court affirmed Simiron’s convictions.



Chargualaf v. Gov’t of Guam Retirement Fund, 2021 Guam 17

Chargualaf appealed the trial court’s decision to uphold a declaratory ruling by the Government of Guam Retirement Fund (GGRF). He challenged the trial court’s interpretation of 4 GCA § 8104 and related statutory provisions that mandate how the government is to calculate annuities due under the GGRF Defined Benefit Plan. He also argued his due process rights were violated because GGRF denied him a hearing and the Superior Court denied him discovery.

On appeal, Chargualaf requested the court hold retroactive compensation should count towards one’s “salary” for the year in which they received the payment. The Supreme Court disagreed, holding it would contravene the legislature’s intent. GGRF was not required to hold a hearing before adjudicating

SYNOPTIC BRIEFS

Chargualaf’s petition for a declaratory ruling because there were no facts in dispute. Likewise, the trial court was not required to order discovery because the dispute between the parties involved only statutory interpretation. The court affirmed the trial court’s ruling.



People v. Perez, 2021 Guam 18

While on pretrial release for Attempted Burglary, police found Perez with a substance that yielded presumptive positives for methamphetamine and a book titled, *Secrets of Methamphetamine Manufacture: Including Recipes for MDA, Ecstasy, and Other Psychedelic Amphetamines*. He was indicted inter alia for Possession of a Schedule II Controlled Substance as “an amphetamine-based substance” plus a special allegation for commission of a felony while on felony release. After a jury briefly saw the book without further scientific evidence and found Perez guilty of possession, he moved for acquittal arguing insufficient evidence that methamphetamine is amphetamine-based; he later appealed on the same grounds. Before sentencing, Perez waived his Apprendi rights for the same jury to hear the special allegation for extra jail time. The trial court dismissed the burglary and sentenced Perez, including a five-year sentencing enhancement. On appeal, the Supreme Court upheld Perez’s “Blakely waiver” to forgo a jury, finding the court’s questions and Perez’s signature evidenced no coercion. In reviewing the amphetamine issue for sufficiency, the Supreme Court determined the name “methamphetamine” alone was insufficient for a reasonable jury to convict based on the indictment. However, the Supreme Court took judicial notice sua sponte that methamphetamine is an amphetamine and affirmed the conviction. The court also affirmed Perez’s sentence, finding dismissal of his burglary charge did not undermine the special allegation sentencing enhancement. The court denied rehearing.



In re Certificate of Title No. 134390, 2021 Guam 19

Quitugua appealed a summary judgment in favor of the Government wherein two certificates of title were corrected to reflect her as a tenant in common instead of sole owner. Quitugua’s mother had gifted one parcel to Quitugua and her sister and the other to Quitugua’s brothers; both parcels reserved life estates for the mother, and certificates of title were not issued. Despite these gifts, Quitugua’s mother later transferred her own interests in both parcels to Quitugua. When the government later petitioned to correct title reflecting the earlier transfer, Quitugua’s siblings were neither summoned nor appeared, but Quitugua claimed each cancelled their respective interests. The trial court found no issue of material fact and granted summary judgment. On appeal, the Supreme Court disagreed with Quitugua’s claim that the trial court lacked 21 GCA § 29195 subject matter jurisdiction. The court found the Attorney General may represent the Department of Land Management as registrar for such a petition under 5 GCA § 30109. It also disagreed that failure to summon parties would remove subject matter jurisdiction as 21 GCA § 29195 contains no express jurisdictional element. The court also disagreed that the estates of Quitugua’s brothers were necessary parties under GRCP 19, because the trial court could have granted complete relief without them, the ability to protect their interests was not impaired, and the parties were not subject to substantial risk of inconsistent obligations. The court affirmed, finding no error in the trial court’s conclusion that Quitugua raised no issue of material fact and that the government’s deeds were properly admitted evidence under GRE 902.

SYNOPTIC BRIEFS



People v. Quitugua, 2021 Guam 20

In the trial court, indigent defendant Quitugua moved for an ex parte hearing under seal regarding expert funding and asked under CVR 7.1.1 to forgo serving notice on the prosecution, as doing so would infringe on his defense strategy and constitutional rights. In its discretion under 7 GCA § 3108(b)(1)-(3), the Supreme Court accepted interlocutory review, finding that determining the issue would clarify further proceedings as to Quitugua’s defense theories and willingness to disclose information and could relatedly protect him from irreparable injury and clarify the administration of justice. The court found the privilege against self-incrimination may necessitate an ex parte hearing to provide the defendant the necessary privacy to present his most compelling rationale for seeking expert assistance; a non-indigent defendant would not require such a public hearing. The court vacated the trial court’s denial of Quitugua’s sealed ex parte hearing, but it held mere notice of the hearing’s existence does not infringe on his work product.



Hi Life Tours, LLC v. Gov’t of Guam Dep’t of Parks & Recreation, 2021 Guam 21

The Supreme Court ultimately vacated a trial court judgment directing the Department of Parks and Recreation (DPR) to issue its permit for Recreational Water Use Management Plan Area Number 6 (RWUMP-6) to Petitioner Joe’s Jet Ski. Cumulatively 10 GAR §§ 6101, 6108, 6114, and 6115 allow one vendor to operate commercial jet skis per year in each designated RWUMP area. The related authorized permit continues year to year, and DPR customarily waitlists other qualified applicants. Respondent Ocean Jet, Inc. held the RWUMP-6 permit for approximately 28 years before filing for bankruptcy in September 2018. While the bankruptcy was contested, Petitioner Joe’s Jet Ski confirmed via memo it was next on DPR’s waitlist; meanwhile Respondent Guam Ocean Park applied for RWUMP-6.



Camacho v. Shimizu, 2021 Guam 22

In early 2020, the Superior Court invalidated certain “electronic gaming” regulations promulgated by the Department of Revenue and Taxation (DRT) because the regulations had not complied with the procedural requirements of the Administrative Adjudication Law, 5 GCA § 9300 et seq. (AAL). Guam Music, Inc. appealed, arguing first that the enabling statute for these regulations explicitly exempted the regulations from needing to comply with the AAL compliance. Guam Music then argued in the alternative that even if the regulations were initially invalid, the Legislature had since ratified and cured the regulations through subsequent enactments.

SYNOPTIC BRIEFS

The Supreme Court disagreed. The Supreme Court first held, contrary to the government’s position, that the Legislature did have the power to delegate to DRT the power to make such regulations. But the court further held that while DRT had the power to make these regulations, the enabling statute did not exempt the regulations from AAL compliance. DRT’s failure to comply with the AAL meant the regulations were invalid ab initio. The court then rejected Guam Music’s alternative position that the regulations had been ratified and cured through subsequent legislation. The court interpreted the plain language and the legislative intent of the proffered legislation and found no evidence that the Legislature recognized any deficiency in the regulations, and thus found no evidence that the Legislature clearly intended these subsequent enactments to cure such deficiencies. Thus, the court affirmed the Superior Court’s conclusion that the “electronic gaming” regulations were invalid—and that any licenses issued under these regulations to “electronic gaming” businesses were likewise invalid.



Topasna v. Gov’t of Guam, 2021 Guam 23

Topasna appealed from the Superior Court’s denial of his Petition for a Writ of Mandamus. In his petition, Topasna sought, under Rule 8.406 of the Personnel Rules, to be either released from his work duties with pay and without charge to leave during the 2020 Covid-19 State of Emergency, or to be compensated at double his regular rate for work performed during the State of Emergency. The trial court denied Topasna’s petition, holding that mandamus would not lie because Topasna had failed to prove all predicate conditions for relief under Rule 8.406. The Supreme Court affirmed, holding that the closure of Topasna’s work facility was a predicate condition for paid leave under Rule 8.406 and that the trial court did not abuse its discretion in considering facility closure to be a predicate condition.



Waathdad v. Cyfred, Ltd., 2021 Guam 24

Plaintiffs Waathdad et al. (collectively, the “Homeowners”), appealed five separate and related orders arising from the Superior Court’s grant of partial summary judgment for Defendant Cyfred, Ltd. The trial court’s judgment held that the Homeowners could not offset their unliquidated, contingent, and non-mutual claim for attorney’s fees against Cyfred’s liquidated claims. On appeal, the Homeowners argued there were material disputes of fact as to whether Cyfred was sufficiently insolvent to allow an exception to the general rules of setoff. The Supreme Court affirmed the grant of partial summary judgment and all five orders originating from it, holding that the Homeowners’ claim failed as a matter of law. Under the general rules of setoff, unliquidated damages cannot be the subject of setoff, with one exception being when the party against whom the setoff is asserted is insolvent. The court held that the Homeowners failed to set forth specific facts and substantiated evidence to support Cyfred’s insolvency, and even if they presented such evidence, the exception would not overcome the general rule that setoff is inappropriate if the parties are not mutual or if the amounts are contingent. The Homeowners also sought an exception under GRCP 13(b), which provides for permissive counterclaims. The court held that GRCP 13(b) did not apply because the Homeowners asserted the setoff as an original action, not as a permissive counterclaim. A petition for rehearing is pending.



Moylan v. Axe Murderer Tours Guam, Inc., 2021 Guam 25

The Moylans appealed from the Superior Court’s denial of their motion for summary judgment under Guam’s Citizen Participation in Government Act (CPGA), which was enacted to protect citizen participation in government from SLAPP suits.

SYNOPTIC BRIEFS

The trial court initially granted the Moylans' motion but reconsidered and reversed after the Supreme Court issued *Cho v. Alupang Beach Club, Inc.*, 2020 Guam 10. Applying *Cho*, the trial court determined that the Moylans did not meet their CPGA prima facie burden because they did not show the claims against them had "no substantial basis other than or in addition to petitioning activities." *Cho*, 2020 Guam 10 (quoting *Duracraft Corp. v. Holmes Prods. Corp.*, 691 N.E.2d 935, 943 (Mass. 1998)). On appeal, the Moylans asked the Supreme Court to carve out an exception to the *Cho* rule and the *Duracraft* test. The court affirmed the trial court's holding, declining to deviate from its reasoning in *Cho* because the alternate rules submitted by the Moylans were deemed inapplicable to the facts of the case.



Hemlani v. Melwani, 2021 Guam 26

This amended opinion on rehearing supersedes in its entirety the prior opinion of this court, *Hemlani v. Melwani*, 2020 Guam 31. Hemlani appealed a final judgment of the Superior Court dismissing his complaint without prejudice for lack of standing. The trial court granted summary judgment to Melwani, the P.D. Hemlani Foundation ("PDHF"), and Radhi P. Hemlani's Estate ("Radhi's Estate"), and held that Hemlani is foreclosed from bringing any action on behalf of the Radhi Puran Trust because he did not have the permission of at least one other co-trustee. The trial court also found that Hemlani lacked standing to challenge a memorandum of settlement from 2011 and the resulting distributions. On cross-appeal, Melwani, PDHF, and Radhi's Estate alleged that the trial court erred in denying their motion to expunge the lis pendens Hemlani filed with his complaint. The Supreme Court reversed the judgment dismissing Hemlani's complaint for lack of standing, but only against individual defendants such as his co-trustees and individual third parties.



People v. Libby, 2021 Guam 27

Libby appealed his conviction for Burglary, Attempted Burglary, Theft of Property, and Attempted Criminal Trespass. On appeal, Libby claimed the trial court violated his right to effective assistance of counsel by improperly denying his request for new counsel. Libby also claimed the trial court deprived him of a fair trial by questioning a witness and making certain remarks he alleged were improper. The Supreme Court disagreed with Libby and affirmed the trial court's judgment. Having reviewed the record to determine the adequacy of the trial court's inquiry into Libby's complaint, the extent of the alleged conflict between Libby and his counsel, and the timeliness of the motion, the court determined that new counsel was not necessary and that the trial court did not abuse its discretion in denying Libby new counsel. Regarding the remarks made by the trial court, the court deemed that while the remarks were inappropriate, any error was not clear or obvious under current law because the remarks did not show actual bias or project the appearance of advocacy or partiality. Even if the remarks did constitute clear error, the error did not affect Libby's substantial rights or significantly prejudice the outcome of the trial.

SYNOPTIC BRIEFS



Ngirangesil v. Kim, 2021 Guam 28

In a wrongful death action filed by Ngirangesil on behalf of her common law partner Wasisang, the Supreme Court upheld the trial court's summary judgment to property owners and employers Mr. and Mrs. Kim. The court reviewed employer liability under the Guam Worker's Compensation Law. The law, as cited in Gibbs, provides immunity for those "in the same employ" as Wasisang. The court agreed with the trial court that corporate officers, like the Kims, who are also landowners of the worksite where the accident occurred, are presumed to have a duty to maintain a safe workplace. Determining that sufficient evidence was presented to find the Kims were in possession and control of the premises, summary judgment was upheld. The court did not apply the "dual persona doctrine" since there were no unrelated duties separate from their employment duties presented. The court also clarified that the rule is not per se immunity for corporate officers under all circumstances; rather, corporate officers who are landowners have a presumed duty to maintain a safe workplace, and an alleged violation of that duty is an omission within their scope of employment.



McCurdy v. Chamorro Equities, Inc., 2021 Guam 29

In an action regarding ownership of registered property including a family home, the Supreme Court reversed the trial court's decision in favor of Chamorro Equities, Inc. (CEI), holding that an oral agreement does not supersede protection for registered property under the Land Title Registration Law. The court found that the trial court erred when it did not apply the Land Title Registration Law during the bench trial. The home, constructed by CEI for Lucy Ulloa, was registered in the Torrens system, and this certificate of title was weighted against McCurdy's claim that the property was orally

conveyed to Lucy and thus, belongs to Lucy's estate. The court found that Lucy participated in the land registration proceeding, and there is no evidence in her will that mentions the home. The court found that upholding the oral agreement would undermine the Torrens system that registers land titles. The court vacated the trial court's judgment and remanded the case for further proceedings.



People v. Morales, 2022 Guam 1

The Supreme Court affirmed Morales's convictions for three counts of Second Degree CSC but reversed his conviction for First Degree CSC. The court agreed with Morales that the evidence did not support a finding that the minor victim would suffer from serious emotional distress if she testified in the courtroom; however, Morales did not object. Next, the court found that the jury instructions were not prejudicial. The jury was properly instructed on the presumption of innocence even without the verbatim instructions proposed by Morales. Third, the court reviewed statements Morales claimed were inappropriately admitted as hearsay. The court found that a conversation between the victim and her mother met the excited utterance exception and other statements by doctors were admissible under the medical diagnosis and treatment exception. However, under a plain error analysis, the court found a second conversation between the victim and her mother did not fit any hearsay exception under Rule 803(2). The court concluded that the admission of this statement affected Morales's "substantial rights" since his conviction for First Degree CSC relied on its proper admission. Finally, the court found there was sufficient evidence to support the three counts of Second Degree CSC.

SYNOPTIC BRIEFS



People v. Reselap, 2022 Guam 2

Reselap appealed from a judgment finding him guilty of Aggravated Assault, Terrorizing, Criminal Mischief, and Family Violence. The Supreme Court affirmed part of the judgment upholding the Special Allegations for Possession or Use of a Deadly Weapon. The court concluded there was no violation of the Double Jeopardy Clause since the Ninth Circuit has previously found that the Guam Legislature intended for the special allegation to apply even if the underlying felony involves use of a deadly weapon. The Supreme Court sustained each conviction with a special allegation and found that the way Reselap used the machete made the machete a deadly weapon with the potential to cause serious bodily injury or even death. The court clarified that Reselap swung at cars occupied by passengers and that a verbal threat is not required to be convicted under the terrorizing statute. The court found the trial court erred by not holding an evidentiary hearing required to determine if Reselap had the ability to pay the imposed fine. The case was remanded to the trial court to conduct other evidentiary hearings for the fine and restitution sentences.



People v. Pinaula, 2022 Guam 3

In an action relating to a stolen truck, the Supreme Court reversed Pinaula's conviction for Theft by Receiving for insufficient evidence. First, the court established jurisdiction to hear the appeal, finding that when a statute and court-promulgated rule conflict, absent a clear legislative policy, the court rule should control in procedural matters. In this case, both GRAP 4 and 8 GCA § 130.40 require the defendant to file the notice of appeal within ten days of the entry of judgment. Under GRAP 11's method for computing time, Pinaula's appeal was timely; however, if the court were to apply the mechanism for computing time under 8 GCA § 1.25, Pinaula's appeal was 5 days late.

The Supreme Court agreed that GRAP 11 was consistent with the court's authority under the Organic Act, and jurisdiction was proper. Second, the majority opinion reversed Pinaula's conviction based on insufficient evidence to prove the fourth element of Theft by Receiving, "knowing that it [property] has been stolen or believing that it has probably been stolen." The court concluded there was no direct or circumstantial evidence to show that Pinaula was aware the vehicle was stolen. Chief Justice Carbullido concurred with the court's conclusion on jurisdiction but dissented on the majority's reversal. The Chief Justice reiterated that circumstantial evidence alone can prove elements of the crime and opined there was sufficient circumstantial evidence to affirm Pinaula's conviction.



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Should you have any questions, please feel reach out. We look forward to seeing everyone!

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