

# GUAM BAR BRIEF

QUARTERLY  
NEWSLETTER

DECEMBER 2019  
ISSUE NO. 6

## *New Year, New Changes - Proposed Rules for Lawyer Discipline*

The Supreme Court Proposed Guam Rules for Lawyer Disciplinary Enforcement and Disability Proceedings, Amended November 15, 2019, have been circulated to our membership via electronic mail. As a reminder, comments are due by December 15, 2019.

Members may not be aware that the Proposed Rules, which are anticipated to be made effective January 1, 2020, include the adoption of a new attorney regulatory system. The Proposed Rules **establish a Regulatory Commission** (Rule 2 - made up of 5 attorneys and 2 public members) who will be appointed by the Court to "oversee the administrative processes" of the regulation of attorneys. Some of those duties include conducting an annual performance evaluation of the Regulatory Counsel (formerly "Ethics Prosecutor"), coordinating and recommending appointments to the Investigative Committee and Hearing Panel (formerly the responsibility of the Board of Governors), and preparing a budget for expenses of the Commission to fulfill its obligations.

Listed below are the top five major changes to the disciplinary process that our members need to know and understand:

1. The Proposed Rules **removes confidentiality** of proceedings after the filing of formal specifications (Rule 16).
2. The Proposed Rules **require public disclosure of all documents** filed in a formal proceeding, known as the Hearing Panel (Rule 16(a)).
3. Grants **civil immunity as an absolute privilege** for all communications in the regulatory disciplinary process (Rule 12). All lawsuits for conduct in a disciplinary process will be prohibited.
4. There will be a 6-year statute of limitations on most complaints, but **no statute of limitations** on "fraud, conversion or conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment on the part of the lawyer." (Rule 32).
5. **Certain Ethics complaints** against the Regulatory Counsel, Investigative Committee members, and/or Hearing Panel members are dealt with confidentiality and with finality by the Regulatory Commission. There will be no required checks and balances of the determination of the Commission (Rule 2(d)(4)).

The Board of Governors believes this list of major changes to be critical to its membership; however, a careful review of all rules proposed is encouraged. An annual disciplinary assessment fee of each GBA member has been suggested to perform the regulatory functions of the Judiciary under the Proposed Rules (Rule 8).

The Board of Governors is circulating a Petition to seek suspension of these Proposed Rules and further seek the appointment of a Subcommittee by the Supreme Court, comprised of stakeholders and including no less than 9 attorneys and at least 2 judges from the Superior Court of Guam as follows: the Board of Governors (2), current or former members of the Ethics Investigative Committee (2), current or former members of the Ethics Adjudicative Committee (2), the Ethics Prosecutor (1), other interested GBA members (2), and judicial members (2). The Petition will also seek a proposed budget to establish and operate the Regulatory Commission, and identification of the source of funding to perform the Judiciary of Guam's regulatory function.

You may sign a copy of the Petition at the GBA office; a copy of the Petition will also be available for signature at upcoming GBA functions.

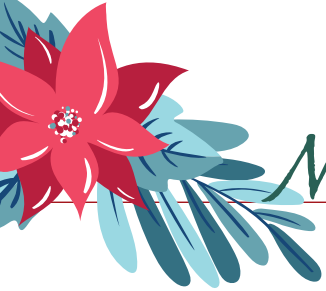


## *What's Inside*

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(671) 989-4227  
[info@guambar.org](mailto:info@guambar.org)  
<https://guambar.org>



# New GBA Webpage - <https://guambar.org>

Your Board of Governors is pleased to announce that our new GBA webpage was live on December 2, 2019! If you have already visited <https://guambar.org>, you would have seen that different portals have been created for access by the public and members. Members will be provided with unique logon information to create passwords with which they can manage their registration status, CLE records, and update their profiles. Only information marked public on a member's registration form will be visible to the public.

One of the features included for the convenience of our busy members is the ability to register and pay for membership online. A quick guide to online registration was circulated via electronic mail and has been provided below. This payment function will also be available for members to register and pay for CLE courses, special events, and provide donations for GBA-sponsored community programs.

An updated member directory will be uploaded on January 10, 2020, after registrations have been submitted. The practice areas members designate on their registration forms will help enhance our Lawyer Referral Service. Do take some time to navigate our new page and let us know what you think!

## *Quick Guide to the GBA 2020 Online Registration Process*

### STEP ONE

- Navigate to [www.guambar.org](http://www.guambar.org) and click on the link [click here](#) to register online on the top or the Registration button on the top right corner to be navigated to the main Registration Page.
- On the main Registration Page, complete the Membership Information section:

Select *Attorney* or *Judge*:

**Membership for\*:**  
☐ Attorney ☐ Judge

Select Class of Membership:

**Class of Membership for 2020\*:** ⓘ [Click for more info](#)  
Select  
▼  
Select  
Active - \$300.00  
Temporary Active - \$300.00  
Inactive - \$75.00  
Former Member No Annual Fee - \$0.00

Enter Date of Admission. If you don't recall the exact dates, enter 01 for either month (MM) or date (DD).

- Complete the General Information section:  
New this year: we have requested separate contact information based on Personal and Business. This will help streamline official GBA records. Note: personal contact information will not be published online on the Guam Bar website or made public.



- Practice Area Designation: The Practice Area Designation will help increase efficiency of public referrals from the GBA.
  - o Required for Active members
  - o Required for Inactive members (used for statistical purposes only)
  - o Not applicable for Inactive Judges
- Check the I Agree to the Terms & Conditions box and click on Submit .

☒ I AGREE TO THE TERMS & CONDITIONS \*

You must agree to the Terms & Conditions before you can click Continue to Next Step to Check-out button.

**Submit...CONTINUE TO NEXT STEP**

- Payment Portal: Select from the following options:
  - o Pay instantly by credit card / debit card / PayPal account
  - o Mail a Personal, Business or Government Agency Check
  - o Hand-Deliver a Personal, Business or Government Agency Check

## STEP TWO

- On the Thank You page, print the Confirmation & Invoice Page, the 2020 Joint Supreme Court/GBA Statement, the CLE Certification Form and the Optional Pro Bono Certification Form by clicking on the following buttons:

[CLICK TO PRINT THIS CONFIRMATION & INVOICE PAGE](#) [CLICK TO PRINT THE JOINT SUPREME COURT/GBA 2020 REGISTRATION STATEMENT](#)

Since you are here, you may print these forms, as well.

[CLICK TO PRINT CLE CERTIFICATION FORM](#) [CLICK TO PRINT PRO BONO REPORTING & CERTIFICATION](#)

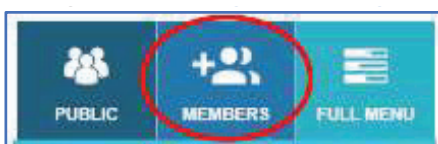
- If registering multiple members, click on the Register Another Member at the bottom of the Thank You page:

[Back to Website's Home Page](#) [Register Another Member](#)

- Sign ALL forms, include all other accompanying documents and deliver to the Supreme Court of Guam:
  - o Via Mail: Registration Packet must be postmarked by December 31, 2019.
  - o Via Hand-Delivery: Registration Packet must be hand-delivered to the Supreme Court by December 31, 2019. The Supreme Court Intake Window is open Monday through Friday, 8 a.m. – 4 p.m.

## NEXT STEPS: LOGGING ONTO YOUR GBA MEMBER PROFILE

- A notice with your username will be emailed to you starting December 1, 2019.
- Navigate to [www.guambar.org](http://www.guambar.org) and click on the Members button on the upper right corner.



- Enter your username and you will be prompted to create a password.
- You may update your profile information, upload an updated photo, etc.

## FOR TECHNICAL ASSISTANCE:

- Call the GBA Office Monday through Friday, 9 a.m. – 5 p.m., (671) 989-4227.
- Email the GBA Office at [info@guambar.org](mailto:info@guambar.org).



# Subpoena Register

## Modification of Professional Responsibility Rules

The GBA filed a petition to the Supreme Court in May 2019 to modify Guam Rules of Professional Conduct 1.2(d) to address the ethical implications of advising clients on Guam's marijuana and cannabis-related laws. The petition followed a vote of the membership taken at the April 30, 2019 annual meeting.

The Supreme Court requested commentary from the membership in October 2019 and adopted modification of Guam Rules of Professional Conduct 1.2(d) on Nov. 8, 2019.

## Parking Alternatives at the Judiciary of Guam

GBA members are permitted to park at the former Department of Administration parking lot, however, the Post 1 Bravo Entrance (by West O'Brien Drive) is not open to the public and may only be accessed with an ID Card.

To gain access through Post 1 Bravo Entrance, members must submit a memorandum of request to the Administrator of the Courts (AOC) with the following information: (1) basis of the request (seeking access through Post 1 Bravo Entrance), and (2) name of attorney and firm/agency. Requests may be sent to AOC John Lizama at [jlizama@guamcourts.org](mailto:jlizama@guamcourts.org) or contact 475-3544 for more information.

## GBA Scholarship for Attorney Recruitment

The GBA is developing a scholarship to encourage attorney recruitment in Guam. Suggestions are to provide a stipend and/or coordinate credits for law students to obtain summer internships with law firms or agencies in Guam, thereby encouraging future employment. Attorneys, firms, or agencies interested in participating in the program are requested to contact the GBA office at [info@guambar.org](mailto:info@guambar.org).

## Update re GBA Medical/Dental Insurance

Many law firms in Guam, like many other local businesses, routinely struggle to find affordable and comprehensive health insurance for its employees. In light of this, members of the GBA have exhibited a strong interest in a medical and/or dental insurance plan that will cover attorneys, their employees and dependents.

This year, recognizing such a need, the GBA began gathering relevant data from members via a short survey in order to develop an optimal plan for all. The data collected via the survey was then used to obtain quotes from various health insurance carriers. The GBA is now in the process of reviewing medical and dental proposals from the various insurance companies and will engage in negotiations with the carrier who proves to provide the best option for members.

## Upcoming CLEs

**2020 Pacific Judicial Council/American College of Trial Lawyers** will sponsor a Trial Practice Training from January 27 to 29, 2020, at the Fiesta Resort & Spa, Saipan, CNMI. Online registration is available at <https://cvent.me/d4K5wB>. Registration deadline is December 16, 2019.

**District Court of Guam 2020 Annual District Conference**, tentatively scheduled for July 16, 2020, will feature the Honorable Elena Kagan, Associate Justice of the Supreme Court of the U.S. and the Honorable Sidney Runyan Thomas, Chief U.S. Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit.

## 2020 Mock Trial Season

The GBA requests its members volunteer their time to act as mock trial team coaches or judges for the upcoming 2020 High School Mock Trial Competition season. If you are interested in brushing up on your evidence and trial practice skills while volunteering, please contact the GBA office at [info@guambar.org](mailto:info@guambar.org).



# Adios & Thank You



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



**Richard S. Dirkx**

Richard S. Dirkx began his career as a government attorney in 1988 and was admitted to the GBA in 1994. He retired from the Public Defender Service Corporation after 31 years of practice.



**Kenneth D. Orcutt**

Kenneth D. Orcutt began his career as a government attorney in 1988 and was admitted to the GBA in 1994. He retired from the Office of the Attorney General after 31 years of practice.



**R. Happy Rons**

R. Happy Rons began her career as a government attorney in 1988 and was admitted to the GBA in 1994. She retired from the Office of the Attorney General after 31 years of practice.

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

We wish you the best going forward!





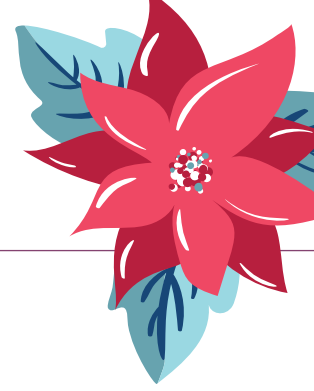
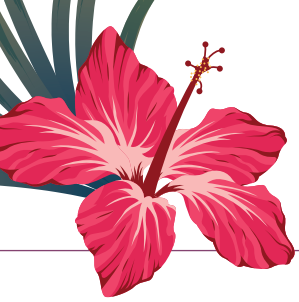
# Whenever, Wherever, Off-the-Grid Banking

Enroll in Online Banking  
to check your account balance,  
pay your bills and more.



bankofguam.com   

Member  
FDIC



# *"What Lawyers Should Know About Restorative Justice"*

An article for the Guam Bar Brief  
by  
Attorney Patrick Wolff  
Founder & President Emeritus  
Inafa Maolek Conciliation

Most Guam attorneys know about mediation services provided by non-profit Inafa' Maolek since 1983. Fewer are aware; however, of the Peer Mediation trainings provided in our island schools since 1984 and Restorative Justice ("RJ") services which began that same year. This article is dedicated to explaining Restorative Justice.

Our criminal justice system attempts to answer these three (3) questions:

- 1) What crime(s) was committed?
- 2) Who committed that crime(s)?
- 3) What sentence/disposition is appropriate?

Restorative Justice strives to answer different questions:

- 1) Who has been harmed (by a criminal or delinquent act)
- 2) What are those harms?
- 3) Who is responsible to address those harms?

Restorative Justice is a confidential process.

Restorative Justice is a community-based response, involving community volunteers and stakeholders, to help make things right for victims, and hold offenders responsible for addressing harms. It is used primarily as an aide to our justice system, but in the case of pre-adjudicatory diversion, Restorative Justice may be used in lieu of court intervention in appropriate cases.

Inafa' Maolek charges modest fees to cover expenses of its office and case coordinator but where referral is made pursuant to Court Order our judiciary pays said fee.

Inafa' Maolek trained volunteers facilitate the 3-step process:

- 1) Separate meeting with offender to ensure offender accepts responsibility, is remorseful, and wants to make things right.
- 2) Separate meeting with victim to explain the advantages of participating and explaining the process.
- 3) Joint meeting of victim and offender together.

Restorative Justice can be used for any type of crime or delinquent act, but is less effective in victimless crimes. Restorative Justice works for felonies as well as misdemeanors. Typical referrals are property crimes and assaults. Shoplifting would necessitate a company employee to represent the victim. Offenses with a continuing relationship are especially appropriate.

Referrals may be made at any juncture of a criminal or delinquent case. Attorneys can foster referrals by:

- 1) Suggesting Restorative Justice to the prosecutor and/or the judge.
- 2) Ensuring that both offender and victim are willing to participate and providing Inafa' Maolek with their contact info.

For more information, call Inafa' Maolek at 475-1977 or this author.

Patrick Wolff  
649-7502  
atty.patrick.wolff@gmail.com






# ABA 2019 Law Day Best Public Program" Award

Congratulations to the GBA, Judiciary of Guam, and District Court of Guam, recipients of the American Bar Association (ABA) Law Day 2019 Outstanding Activity Award for Best Public Program!

The 12th anniversary of continued collaboration among the three organizations to engage and promote an understanding of the legal system in Guam. Law Day occurs as a month-long celebration in Guam where legal professionals actively partake in events including the Law Day Fair, Race Judicata 5K Carabao run/walk, Justice Patch Program in collaboration with Guam Girl Scouts, Tactical Challenge, student Mock Trials, and other forms of educational outreach designed to engage the island community.

The 2019 Law Day Outstanding Activity Award for Best Public Program will be presented to the three organizations at the ABA MidYear Meeting on February 14, 2020, in Austin, Texas.

**Guam is the proud recipient of seven ABA Law Day awards for years 2008, 2009, 2012, 2015, 2016, 2018, and 2019.**



The Guam Bar Association Presents:

# SENIOR LAW CLINIC


A Free  
Informational  
Workshop on  
Estate  
Planning:  
- Probates  
- Wills  
- Deeds  
- PoA's  
- Trusts

**WED  
NOV  
20  
2019**

**10:30 AM**

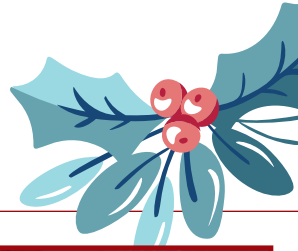
**SINAJANA  
SENIOR CENTER**  
Next door to GHURA and the  
Sinajana Mayor's Office

Special Thanks:  



# CLEs & Community Outreach



## SAVE THE DATE!

### Bankruptcy Seminar

The District Court of Guam is pleased to present a Bankruptcy Seminar on the topic of "Chapter 11 Fundamentals." CLE Credits will be available.

**Wednesday, September 25, 2019**  
**9:00 a.m. to 12:00 p.m.**  
**District Court of Guam**  
**Fourth Floor Jury Assembly Room**  
**Hagatna, Guam**

#### Featured Speakers:

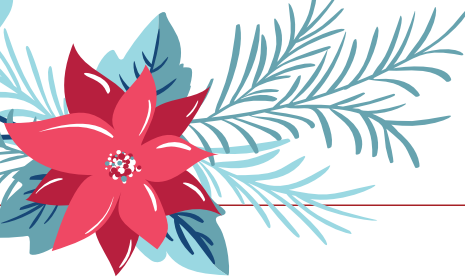
**Mr. Curtis B. Ching, Assistant U.S. Trustee**  
**Mr. Neil J. Verbrugge, Trial Attorney**

Mr. Ching and Mr. Verbrugge are from the Office of the United States Trustee for Region 15, which serves the federal judicial districts established for Southern District of California, the District of Hawaii, the District of Guam and the Commonwealth of the Northern Mariana Islands.

Registration information and updates regarding the upcoming Bankruptcy Seminar will be provided through the District Court of Guam and the Guam Bar Association websites. Stay tuned!

For more information, please contact:  
Cynthia V. Ecube (9th Cir. Representative) at 671-472-8889, [info@ecubelaw.com](mailto:info@ecubelaw.com);  
or Francine Diaz at 671-969-4511, [francine\\_diaz@gud.uscourts.gov](mailto:francine_diaz@gud.uscourts.gov).





# Synoptic Briefs



## People v. Omwere, 2019 Guam 17

The Supreme Court affirmed Omwere's conviction for kidnapping after finding that sufficient evidence existed to support both the "force, threat or deception" element and the "purpose" element of the kidnapping statute. While the victim begged Omwere not to take her car and agreed to drive him somewhere, the first element was satisfied by evidence that the defendant instructed the victim at knife-point to take him wherever he needed to go. The "purpose" element of facilitating the commission of any felony or flight thereafter was satisfied by circumstantial evidence sufficient for a jury to conclude that Omwere had the intent to commit sexual assault when he started to transport the victim a substantial distance.



## Bautista v. Torres, 2019 Guam 18

Affirming in part and reversing in part the Superior Court's grant of summary judgment to defendants, the Supreme Court found that the statute of limitations' discovery rule begins to run when an objective, reasonable person, not a "reasonable Guam resident," would have discovered the injury. The court also concluded that the continuing claim doctrine, equitable estoppel, and the continuous representation rule did not apply. Further, the Supreme Court held that a subsequent attorney is not liable for failing to file a claim when the statute of limitations expired before the existence of an attorney-client relationship or fiduciary duty. However, the court found disputed material facts existed regarding the subsequent attorney's alleged mishandling of deductions and for failing to provide notice of probate proceedings impacting the client's interests. The court refused to review an issue appellants failed to specifically and distinctly argue in their opening brief, and it held that an intervenor waived issues of standing by failing to raise them in the Superior Court. Petition for Rehearing pending.



## People v. Asprer, 2019 Guam 19

The Supreme Court found that the trial court did not err in allowing the People to introduce prior consistent statements of the victim. Guam Rule of Evidence 801(d) (1)(B)'s exception to the hearsay rule was met because defense counsel impeached the victim regarding unreported details and inconsistencies between his statements to a detective and his testimony. Use of prior consistent statements is not limited to the specific details on which a victim is impeached. The court further found that the trial court erred in allowing statements regarding Asprer's alleged homosexuality in the People's attempt to show a defense witness's bias. The court reversed Asprer's criminal sexual conduct convictions because the evidence was not overwhelming, so the People failed to provide a reasonable assurance that the error did not impact the verdict. However, the court affirmed Asprer's convictions for delivery of a controlled substance, possession of a controlled substance, and child abuse because the People presented evidence of drugs and paraphernalia found in Asprer's room and elicited corroborated testimony that Asprer made the minor victim inhale drugs.





# Synoptic Briefs



## People v. Erwin, 2019 Guam 20

Erwin argued there was insufficient evidence to convict him of invasion of privacy stemming from an incident where he was in a women's restroom and placed a cellphone on video mode under the stall. The Supreme Court found the record replete with evidence sufficient for a rational jury to conclude Erwin intended to observe the victim in a state of undress or sexual activity. Erwin testified that he asked if anyone was in the restroom before entering, recognizing the private nature of the area, and he admitted seeing up to the victim's outer thigh. He also conceded that he hid his shirt the victim described him wearing. Finally, the victim testified she had her shorts pulled down.



## Guam Department of Education v. Civil Service Commission (Somerfleck), 2019 Guam 21

The Supreme Court affirmed, on different grounds than below, the judgment of the Superior Court reversing a decision of the Civil Service Commission awarding back pay and interest to a group of teachers asserting that they were owed wages for when the Department of Education delayed the start date of the 2003-04 academic year. In a prior opinion, 2013 Guam 14, the court held that the teachers' claim was barred for failing to exhaust administrative remedies when they filed a personnel action instead of a grievance. Following that opinion, the teachers filed a grievance. The Supreme Court found the grievance untimely because it should have been filed within 15 days of the action or occurrence, which was the alleged failure to pay and not the court's prior opinion. Equitable estoppel did not apply to toll the limitations period because the record did not contain evidence of reliance on a specific statement by management that lulled the teachers into a sense of security in not filing a grievance.



# *It's time to promote our health: ABA mobilizes on multiple fronts to address well-being in the legal profession*



By Bob Carlson, ABA Past President

This article was published on December 1, 2018 and can be found online at [http://www.abajournal.com/magazine/article/its\\_time\\_to\\_promote\\_our\\_health](http://www.abajournal.com/magazine/article/its_time_to_promote_our_health)

The holiday season is upon us, and office parties and family gatherings fill our calendars. For most, these are times of great joy and good cheer. However, for those suffering from substance abuse or mental health issues, the holidays can become a time of dread and depression.

A 2016 study conducted by the American Bar Association Commission on Lawyer Assistance Programs (CoLAP) and the Hazelden Betty Ford Foundation found that 21 percent of licensed attorneys qualify as problem drinkers. That's 1 in 5 and compares to just 1 in 8 of highly educated workers in other professions.

The study also revealed that 28 percent of lawyers experience depression and 19 percent have anxiety symptoms. The problems are more prevalent among young attorneys in their first 10 years of practice. Evidence shows lawyers also suffer from increased levels of suicide, work addiction and sleep deprivation.

At your next firm party or bar association gathering, look around the room. Odds are that if some people you see are not suffering from these issues, they know someone who is.

This issue should be important to all of us in the profession. To be an ethical, competent lawyer, you first need to be a healthy lawyer.

America's lawyers need to know that the ABA is working hard to improve lawyer wellness. Through CoLAP, we are working to ensure that every lawyer, judge and law student has access to support when dealing with substance abuse and mental health issues.

Since the 2016 study, the ABA has taken steps to draw attention to lawyers facing distress and to help firms act.

In 2017, the ABA's National Task Force on Lawyer Well-Being issued a report called "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change." This report concentrated on the roles we all can play in addressing this problem. It stressed education and emphasized that well-being is an integral part of a lawyer's duty of competence. The report provides recommendations, with state action plans, for legal profession stakeholders, including regulators, the judiciary, law schools, professional liability carriers and bar associations.

The report highlights the need to eliminate the stigma of seeking help. Creating a safe, confidential path to getting assistance is critical to solving the problem.

My predecessor, Hilarie Bass, formed a Presidential Working Group to Advance Well-Being in the Legal Profession in September 2017. The group assists legal employers—which often want to help but are unsure where to start—develop and support healthy work environments.

The "Well-Being Toolkit for Lawyers and Legal Employers," released in August, offers tools for legal employers that want to join the lawyer well-being movement by launching organizational initiatives. Also available is the "Well-Being Toolkit Nutshell: 80 Tips for Lawyer Thriving," summarizing 80 of the toolkit's key items.

To raise awareness, the ABA launched a campaign in September targeting substance-use disorders and mental health issues among lawyers. After just one month, 25 of the nation's largest law firms have already signed a pledge to support the initiative and adopt its framework for improved well-being.

At the ABA 2018 Midyear Meeting in Vancouver, the House of Delegates passed Resolution 105, which made it ABA policy to support the goal of reducing mental health and substance use disorders. The resolution also called for all entities dealing with lawyers to consider putting into action the recommendations contained in the "Path to Lawyer Well-Being" report.

To aid our future lawyers, the ABA Law Student Division sponsored Law School Mental Health Day in October, which included podcasts, webinars and a YouTube Live event. They also encouraged law schools to hold programs that break the stigma associated with depression and anxiety.

The legal profession is at a crossroads. Our members, our colleagues, our friends are suffering. It is our duty as lawyers and human beings to help. So please, enjoy the holidays, but keep in mind others who may need help. Get involved, talk to your firm and colleagues, start a well-being program and join the ABA in helping lawyers through these problems.