



Territory of Guam
Territorio de Guam

OFFICE OF THE GOVERNOR
LEGISLATIVE CAMPUS
AGANA, GUAM 96910

6-207-90

MAY 18 1990

The Honorable Joe T. San Agustin
Speaker, 20th Guam Legislature
155 Hernan Cortez St.
Agana, Guam 96910

Dear Mr. Speaker:

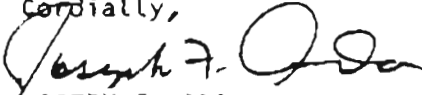
Enclosed is Substitute Bill 1255 which I have signed into law as Public Law 20-175.

Although I find the bill and its intention laudable, I request that the Legislature make certain amendments:

- (1) In Section 28064(b)(4) options and offers prepared by real estate brokers and salespersons should be recordable at the Department of Land Management. These recordings protect the buyer. The buyer should not be penalized by this unnecessary restriction.
- (2) With reference to Section 28064(c)(6) pro hac vice admission should not be required for off-island attorneys who assist in non-judicial legal matters.
- (3) With respect to Section 28064 (d) does the requirement for civil prosecution only prevent the government from prosecuting illegal practice which has resulted in fraud being perpetrated against an innocent person? For example, if a person in practicing law illegally defrauds another, is this section cloaking that illegal practitioner with an immunity from criminal prosecution?

I request the Legislature's reconsideration of these provisions. Thank you and Si Yu'os Ma'ase.

Cordially,


JOSEPH F. ADA
Governor

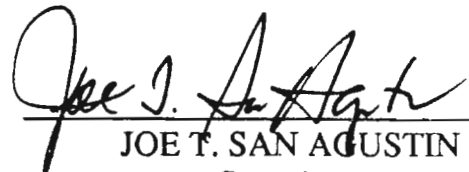


Commonwealth Now!

TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

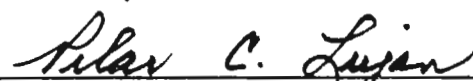
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 1255 (LS), "AN ACT TO ADD §§28064 AND 28065 TO THE GOVERNMENT CODE TO REGULATE THE PRACTICE OF LAW, AND TO AMEND SUBSECTION (f) OF §28019 OF THE GOVERNMENT CODE ON ELIGIBLE LAW SCHOOLS," was on the 1st day of May, 1990, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



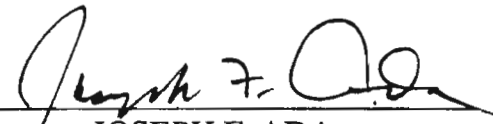
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 1th day of May,
1990, at 4:44 o'clock P.m.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: MAY 18 1990

Public Law No. 20-175

TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

Bill No. 1255 (LS)
As Substituted by the Committee
on Justice, Judiciary and Criminal
Justice and as further substituted
by Committee on Rules

Introduced by:

D. Parkinson
P. C. Lujan
J. P. Aguon
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
C. T. C. Gutierrez
G. Mailloux
T. S. Nelson
F. J. A. Quitugua
E. D. Reyes
J. T. San Agustin
F. R. Santos
J. G. Bamba
D. F. Brooks
E. R. Duenas
E. M. Espaldon
M. D. A. Manibusan
M. C. Ruth
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD §§28064 AND 28065 TO THE
GOVERNMENT CODE TO REGULATE THE PRACTICE OF
LAW, AND TO AMEND SUBSECTION (f) OF §28019 OF THE
GOVERNMENT CODE ON ELIGIBLE LAW SCHOOLS.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

1 Section 1. A new §28064 is added to the Government Code of Guam to
2 read as follows:

3 "§28064. Illegal practice of law.

4 (a) Within one hundred eighty (180) days of the effective
5 date of this section, the Ethics Committee of the Guam Bar
6 Association shall promulgate proposed rules and regulations
7 which define the acts which constitute the practice of law within
8 Guam.

9 Such rules and regulations shall then be submitted to the
10 Judicial Council for approval or modification and adoption.
11 Thereafter, such rules and regulations may be amended from time
12 to time by the Judicial Council.

13 (b) The rules and regulations shall provide, among other
14 things, that the following constitute the practice of law:

15 (1) Activities which relate to the rendition of service
16 for others that call for the professional judgment of an
17 attorney.

18 (2) Representing or advising any other person in
19 any criminal matter for any compensation, direct or indirect.

20 (3) Representing any other person or advising any
21 other person as to any lawsuit or action before any court,
22 board, agency, or administrative tribunal, except as allowed
23 by the rules and regulations to be promulgated pursuant to
24 this §28064 or as allowed by this §28064.

25 (4) Preparation for another of any deed, lease,
26 mortgage, promissory note or other document transferring
27 an interest in real property, evidencing a debt, or creating a
28 security interest in real property. This subsection shall not
29 apply to a full time employee of a bank, savings and loan
30 association, loan company, finance company or vendor
31 extending credit to another in the normal course of business.
32 This subsection shall not apply to an employee preparing
33 mortgage and loan documents for credit transactions
34 extended by his employer in the regular course of business;

1 provided, that (i) the employee is not compensated on a per
2 document basis and (ii) the customer is not charged an
3 extra fee for the preparation of documents. This subsection
4 shall also not apply to the preparation of listing agreements,
5 offers and acceptance of offers, and other documents
6 incidental to listing and selling real property which are
7 prepared by licensed real estate brokers or salesmen, but
8 such persons may not prepare any documents to be
9 recorded at the Department of Land Management.

10 (5) Preparation of articles of incorporation or by-
11 laws for a corporation for any compensation, direct or
12 indirect.

13 (6) Advice to another or preparation of documents
14 relating to lawsuits, probate proceedings, juvenile
15 proceedings, or bankruptcies.

16 (7) Preparation for another of court documents to be
17 filed in any court or judicial tribunal.

18 (8) Preparation for another of powers of attorney.

19 (9) Acts which would constitute the practice of law
20 under the common law, except as otherwise specifically
21 provided in this section.

22 (10) Holding out oneself as an attorney admitted to
23 practice law in Guam or elsewhere.

24 (11) Such other acts which the Judicial Council
25 reasonably finds should be performed by an attorney to
26 protect the public.

27 This subsection shall not be considered a limitation as to the
28 definition of what constitutes the practice of law. Other items and
29 acts which constitute the practice of law may be included in the
30 rules and regulations to be issued by the Judicial Council.

31 (c) It shall not be considered the illegal practice of law:

32 (1) To perform legal services for or appear in court
33 for oneself;

1 (2) To appear in small claims court as may
2 otherwise be permitted by court rules;

3 (3) For an employee or agent of an attorney
4 admitted to practice in Guam, to prepare documents, do
5 research, and interview clients under the direct supervision
6 of an attorney admitted to practice in Guam; provided, that
7 the attorney shall be responsible for such acts;

8 (4) For a certified public accountant or tax
9 practitioner enrolled before the Internal Revenue Service or
10 the Department of Revenue and Taxation, to offer tax advice,
11 tax preparation, or to represent clients before the
12 Department of Revenue and Taxation or any tax tribunals to
13 the extent otherwise permitted by law;

14 (5) To prepare income tax returns for others if
15 licensed to do so by the Department of Revenue and
16 Taxation;

17 (6) For an attorney admitted to practice in another
18 state or territory who is associated with an attorney
19 admitted to practice in Guam, to work on a specific legal
20 matter; provided, that approval on a case by case basis is
21 obtained from the Superior Court of Guam or the District
22 Court of Guam, as the case may be;

23 (7) For a military lawyer to appear before military
24 tribunals or to give advice to military personnel;

25 (8) For an attorney who is admitted to practice in
26 some other state or territory of the United States, to advise
27 or represent the government of Guam or the United States of
28 America on legal matters;

29 (9) For a licensed real estate broker, surveyor,
30 architect, or engineer, to represent others before the
31 Territorial Land Use Commission;

32 (10) For a certified public accountant to represent
33 others before the Guam Economic Development Authority;

1 (11) For an employee of a licensed title or escrow
2 company to prepare title reports and abstracts of title;

3 (12) For a government employee and official to give
4 advice to others, and to appear at administrative hearings as
5 part of such person's official duties without compensation
6 other than government salary;

7 (13) For a bona fide full time employee, officer or
8 director of a corporation to represent such corporation
9 before a board or agency or in small claims court;

10 (14) For a bona fide full time employee, officer or
11 director of a corporation to advise such corporation;

12 (15) For a government attorney who is employed by
13 the government of Guam pursuant to §28019.1 of the
14 Government Code to represent the government of Guam;

15 (16) (Grandfather clause) Any person who has
16 represented another before any board or agency during the
17 twelve (12) month period immediately preceding the
18 effective date of this section may register with that board or
19 agency within one hundred eighty (180) days of the
20 effective date of this section. If the board or agency finds
21 that the applicant has in fact legally represent others before
22 that board or agency within the one (1) year immediately
23 preceding the effective date of this section, and finds that
24 the applicant had a business license in effect at the time of
25 the representation which covered the representation, or
26 finds that the applicant paid gross receipts taxes on the fees
27 for such representation, then the board or agency shall so
28 certify and grant the applicant a permit to continue such
29 representation of others. Such permit shall be effective only
30 as to matters before that board or agency; provided, that a
31 person may have more than one (1) such permit. A copy of
32 any such permit shall, at the time of its issuance, be given to
33 the Judicial Council and to the Ethics Committee of the Guam
34 Bar Association.

1 Until such rules and regulations are adopted by the Judicial
2 Council, the definitions relating to the practice of law contained
3 herein and in the common law definition of the practice of law
4 shall apply.

5 (d) It shall be unlawful for any person to practice law in
6 Guam unless that person is an attorney admitted to practice in
7 Guam. Any fees collected by any person who engages in the
8 illegal practice of law shall be returned to the client involved.
9 Such illegal practice shall not be a crime, and any violations shall
10 be prosecuted civilly as herein provided.

11 (e) The Ethics Committee of the Guam Bar Association
12 shall investigate any allegation or evidence of illegal practice of
13 law in Guam. A complaint shall not be necessary if it comes to the
14 attention of the Ethics Committee of the Guam Bar Association
15 which shall have the same powers it has when investigating
16 complaints against Guam attorneys.

17 (f) When the Ethics Committee discovers that any person
18 is illegally practicing law in Guam, it shall bring an action in the
19 Superior Court of Guam to enjoin and restrain such illegal practice
20 of law temporarily and permanently. If the court finds by a
21 preponderance of the evidence that illegal practice occurred , it
22 shall order the return to any clients of fees collected for legal
23 services by such person, repayment of any losses which any client
24 of such person may have suffered as a result of misconduct or
25 malpractice by such person, and shall order the person illegally
26 practicing law to pay costs and reasonable attorneys' fees arising
27 from the investigation and suit.

28 (g) In addition to such penalties, any person who violates
29 an order enjoining him or her from the illegal practice of law shall
30 be punished for contempt of court, action for which may be
31 brought by the Ethics Committee of the Guam Bar Association or
32 by any person, and in addition to the other penalties permitted by
33 law, shall be fined One Thousand Dollars (\$1,000) per day for each
34 day that person practices law contrary to such order and for each

1 day that such person holds himself or herself out as practicing law
2 contrary to such order, as well as for the costs and reasonable
3 attorneys' fees of any investigation and suit.

4 (h) The burden of proof in any proceeding alleging illegal
5 practice of law shall be by the preponderance of the evidence, and
6 the burden of proof shall be on the Ethics Committee or person
7 alleging the illegal practice of law.

8 (i) Any person may bring an action to enjoin and restrain,
9 temporarily or permanently, the illegal practice of law within
10 Guam; provided, that the Ethics Committee of the Guam Bar
11 Association shall be named as a party respondent. The Ethics
12 Committee shall have sixty (60) days to file an answer, claim, or
13 other pleadings; provided, that the court can temporarily enjoin or
14 restrain the illegal practice of law during such period. In such
15 action, the Ethics Committee may bring any cause of action against
16 a person who has illegally practiced law to the same extent as if it
17 had originally brought the suit.

18 (j) In any suit to enjoin the illegal practice of law,
19 disposition and discovery may be had by the Ethics Committee of
20 the Guam Bar Association and other parties immediately upon
21 filing of the case, and the court may accelerate the times allowed
22 for discovery.

23 (k) Upon request of the Ethics Committee of the Guam Bar
24 Association or the attorney therefor, the Attorney General of
25 Guam may apply to the Superior Court of Guam for a search
26 warrant to be executed by the Guam Police Department for
27 evidence of a violation of this section, which shall be granted if
28 the court finds probable cause exists that a violation of this
29 section has occurred in that someone has illegally engaged in the
30 practice of law and that evidence of such violation is located at the
31 place to be searched.

32 (l) In any action for malpractice or misconduct brought
33 against a person who has engaged in the illegal practice of law, the
34 work performed by the person shall be held to the same quality

1 and ethical standards as would be appropriate for the person if
2 the person were an attorney admitted to practice in Guam."

3 Section 2. A new §28065 is added to the Government Code of Guam to
4 read as follows:

5 "§28065. When written fee agreements are required for
6 attorneys.

7 (a) In representing a client, an attorney shall have a
8 written fee agreement which is signed by the client if:

9 (1) The contemplated fee is in excess of \$500, or

10 (2) An appearance is required or reasonably
11 contemplated before any court or agency by the attorney, or

12 (3) The fee is contingent.

13 (b) Such fee agreements shall be in clear and concise
14 language and shall clearly spell out the general nature of the work
15 to be done by the attorney and the financial obligation of the
16 client to pay for such work. In uncontested matters, it shall spell
17 out the financial obligations if the matter becomes contested. If
18 the fee is based on an hourly rate, the hourly rate shall be stated.

19 (c) An attorney shall have his or her client sign such a fee
20 agreement within forty-eight (48) hours of the time the attorney
21 is retained unless that is impossible because the client is outside
22 of Guam or incarcerated or otherwise unavailable, in which case a
23 fee agreement shall be signed at the earliest possible time.

24 (d) Within ninety (90) days of this section becoming law,
25 the Ethics Committee of the Guam Bar Association shall publish
26 various model fee agreements and make the same available to Bar
27 Association members of use or modification, but use of such model
28 forms shall not be mandatory as long as the form used complies
29 with this section.

30 (e) In the absence of a required fee agreement with the
31 client, claims for attorneys fees incurred before a fee agreement
32 was signed shall be unenforceable.

1 (f) Any attorney who is representing clients without
2 written fee agreements on the effective date of this section shall
3 have sixty (60) days to obtain such written fee agreements.

4 (g) Nothing herein shall prevent the parties from
5 amending any fee agreement, nor shall it prevent an attorney
6 raising his or her hourly rates upon thirty (30) days notice to the
7 client if such right is reserved in the agreement.

8 (h) An attorney may withdraw from representation of his
9 or her client when the court finds at a hearing after notice to the
10 client that such client has failed to meet the financial obligations
11 set out in the written fee agreement.

12 (i) Subsections (a), (b), (c), (e), (f), and (g) of this section
13 shall become effective ninety (90) days after this section becomes
14 law, and the remaining subsections shall go into effect on the date
15 this section becomes law."

16 (j) No attorney may accept land as a fee for any legal
17 work without the prior approval of the Superior Court and upon a
18 finding by the Court that the fee arrangement is fair, and that the
19 worth of the land used in calculating the amount of the fee is its
20 fair market value. No attorney may accept a mortgage on real
21 property to secure the payment of fees.

22 Section 3. Subsection (f) of §28019 of the Government Code of Guam is
23 hereby repealed and reenacted to read:

24 "(f) that he/she has graduated from a law school in the United
25 States, its territories or possessions, which is accredited by the
26 American Bar Association or that he/she has previously taken and
27 passed one (1) or more parts of the Guam Bar Examination after
28 graduating from a law school not accredited by the American Bar
29 Association but previously approved by the Judicial Council. No
30 correspondence law school may be so approved."

TWENTIETH GUAM LEGISLATURE
1990 (SECOND) Regular Session

ROLL CALL SHEET

Bill No. 1255

Date: 5/1/90

Resolution No. _____

QUESTION: _____

	AYE	NAY	NOT VOTING	ABSENT
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks			✓	
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
C. T. C. Gutierrez		✓		
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco		✓		

17 2 1 1



PILAR C. LUJAN
SENATOR • LEGISLATIVE SECRETARY
CHAIRMAN — Committee on Judiciary and Criminal Justice

The Honorable Joe T. San Agustin
Speaker, Twentieth Guam Legislature
163 Chalan Santo Papa
Agana, Guam 96910

VIA: Chairperson, Committee on Rules

Dear Mr. Speaker:

The **Committee on Judiciary and Criminal Justice**, to which was referred **Bill No. 1255**, wishes to report its findings and recommendations for passage of **Substitute Bill No. 1255**.

The Committee Voting Record is as follows:

<u>7</u>	TO PASS
<u>1</u>	NOT TO PASS
<u>4</u>	TO REPORT OUT ONLY
<u>0</u>	TO PLACE IN INACTIVE FILE
<u>0</u>	OFF-ISLAND

A copy of the Committee Report and all pertinent documents are attached for your information.

Sincerely,

Pilar C. Lujan
PILAR C. LUJAN



Twentieth Guam Legislature

163 Chalan Santo Papa Street
Agana, Guam 96910

Committee on Judiciary and Criminal Justice

VOTE SHEET ON: SUBSTITUTE BILL NO. 1255

COMMITTEE MEMBER	TO PASS	NOT TO PASS	TO REPORT OUT ONLY	TO PLACE IN INACTIVE FILE
<i>Pilar C. Lujan</i> Senator Pilar C. Lujan Chairman	✓			
<i>F.R. Santos</i> Senator Francisco R. Santos Vice Chairman	✓			
<i>E. Arriola</i> Senator Elizabeth P. Arriola	✓			
<i>Madeleine Z. Bordallo</i> Senator Madeleine Z. Bordallo	✓			
<i>H. Dierking</i> Senator Herminia D. Dierking	✓			
<i>G. Mallou</i> Senator Gordon Mallou			✓	
<i>Ted S. Nelson</i> Senator Ted S. Nelson	✓			
<i>E. Reyes</i> Senator Edward D. Reyes	✓			
<i>Joe T. San Agustin</i> Speaker Joe T. San Agustin		✓		
<i>E. Duenas</i> Senator Edward R. Duenas			✓	
<i>Martha C. Ruth</i> Senator Martha C. Ruth			✓	
<i>A. Unpingco</i> Senator Antonio R. Unpingco				

4/25/90

TWENTIETH GUAM LEGISLATURE
SECOND REGULAR SESSION

Bill No. 1255

As Substituted by the Committee on Justice,
Judiciary and Criminal Justice

Introduced by:

**Don Parkinson
Pilar C. Lujan**

A bill to add a new section 28064 to the Government Code of Guam to regulate the illegal practice of law, and a new section 28065 to the Government Code of Guam to require attorneys to use written fee agreements, to amend section 28019 of the Government Code of Guam relative to bar exams, and for other purposes.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. A new section 28064 is added to the Government Code of Guam to read as follows:

"Section 28064. Illegal practice of law.

(a) Within 180 days of the effective date of this act, the Ethics Committee of the Guam Bar Association shall promulgate proposed rules and regulations which define the acts which constitute the practice of law within the Territory of Guam.

Such rules and regulations shall then be submitted to the Judicial Council for approval or modification and adoption. Thereafter, such rules and regulations may be amended from time to time by the Judicial Council.

1 (b) The Rules and Regulations shall provide
2 that the following constitutes the practice law:

3 (1) Activities which relate to the
4 rendition of services for others that call
5 for the professional judgment of an Attorney.

6 (2) Representing or advising any other
7 person in any criminal matter for any
8 compensation, direct or indirect.

9 (3) Representing any other person or
10 advising any other person as to any lawsuit
11 or action before any court, board, agency, or
12 administrative tribunal, except a
13 specifically allowed by the rules and
14 regulations to be promulgated pursuant to
15 this act or specifically allowed by this act.

16 (4) Preparation for another of any
17 deed, lease, mortgage, promissory note or
18 other document transferring an interest in
19 real property, evidencing a debt, or creating
20 a security interest in real property. This
21 subsection shall not apply to a full time
22 employee of a bank, savings and loan
23 corporation, loan company, finance company or
24 vendor extending credit to another in the
25 normal course of business. This subsection
26 shall not apply to an employee preparing
27 mortgage and loan documents for credit

1 transactions extended by his employer in the
2 regular course of business, provided that the
3 employee is not compensated on a per document
4 basis and the customer is not charged an
5 extra fee for the preparation of the
6 documents. This subsection shall also not
7 apply to the preparation of listing
8 agreements, offers and acceptance of offers,
9 and other documents incidental to listing and
10 selling real property which are prepared by
11 licensed real estate brokers or salesmen, but
12 such persons may not prepare documents for
13 recording at the Government of Guam
14 Department of land management.

15 (5) Preparation of articles of
16 incorporation or by-laws for a corporation
17 for any compensation, direct or indirect.

18 (6) Advice to another or preparation of
19 documents relating to lawsuits, probates, or
20 bankruptcies.

21 (7) Preparation for another of court
22 documents for another to be filed before any
23 court or judicial tribunal.

24 (8) Preparation for another of powers
25 of attorney.

26 (9) Acts which would constitute the
27 practice of law under the common law, except

1 as otherwise specifically provided in this
2 act.

3 (10) Such other acts which the Judicial
4 Council feels reasonably should be performed
5 by an attorney to protect the general public.

6 This subsection shall not be considered a
7 limitation as to the definition of what
8 constitutes the practice of law. Other items and
9 acts which constitute the practice of law may be
10 included in the rules and regulations by the
11 Judicial Council.

12 (c) It shall not be considered the illegal
13 practice of law:

14
15
16 (1) To perform legal services for or
17 appear in court for oneself.

18
19 (2) To appear in small claims court as
20 may otherwise be permitted by court
21 rules;

22
23 (3) For an employee or agent of an
24 attorney admitted to practice in Guam to
25 prepare documents, do research, and
26 interview clients under the direct
27 supervision of an attorney admitted to
28 practice in Guam, provided that the
29 attorney shall be responsible for such
30 acts.

31
32 (4) For a certified public accountant
33 or tax practitioner enrolled before the
34 Internal Revenue Service or the
35 Department of Revenue and Taxation to
36 offer tax advice, tax preparation, or to
37 represent clients before the Department
38 of Revenue and Tax or any tax tribunals
39 to the extent otherwise permitted by
40 law.

41

1 (5) The preparation of income tax
2 returns for others if licensed to do so
3 by the Department of Revenue and
4 Taxation.

5
6 (6) For a lawyer admitted to practice
7 in another state or territory who is
8 Associated with a lawyer admitted to
9 practice in Guam to work on a specific
10 legal matter provided they obtain court
11 approval on a case by case basis from
12 the Superior Court of Guam or the
13 District Court of Guam.

14
15 (7) Military Lawyers and Lawyers may
16 appear before Military Tribunals or give
17 advice to military personnel.

18
19 (8) A Person who is admitted to
20 practice in some other state or
21 territory of the United States may
22 advise or represent the Government of
23 Guam or the Government of the United
24 States on legal matters.

25
26 (9) Licensed surveyors, architects, and
27 engineers may appear before the
28 Territorial Planning Commission.

29
30 (10) Certified Public Accountants may
31 represent clients before the Guam
32 Economic Development Authority.

33
34 (11) Licensed title or escrow companies
35 and their employees may prepare title
36 reports and abstracts of title.

37
38 (12) Government employees and officials
39 may give advice to others, and may
40 appear at administrative hearings as
41 part of their official duties without
42 compensation other than government
43 salary.

44
45 (13) Representation of a corporation
46 before a board or agency or in small
47 claims court by a bona fide full time
48 employee, officer or director of the
49 corporation.

50
51 (14) Advice given to a corporation by a
52 bona fide full time employee, officer or
53 director of the corporation.

54

1 (15) Government Attorneys who are
2 employed by the Government of Guam
3 Pursuant to subsection 28019.1 of the
4 Government Code.
5

6 (16) Grandfather clause: Any person
7 who has represented another before any
8 board or agency during the twelve month
9 period immediately preceding the
10 effective date of this act may register
11 with that board or agency within 180
12 days of the effective date of this act.
13 If the board or agency finds that the
14 applicant has in fact legally
15 represented another before that board or
16 agency within the year immediately
17 preceding the effective date of this
18 act, and find that the applicant had a
19 business license in effect at the time
20 of the representation which covered the
21 representation, or finds that the
22 applicant paid gross receipts taxes on
23 the fees for such representations, then
24 the board or agency shall so certify and
25 grant the applicant a permit to continue
26 such representation of others. Such
27 permit shall be effective only as to
28 matters before that board or agency,
29 provided that a person may have more
30 than one such permit. A copy of any
31 such permit shall, at the time of issue,
32 be given to the Judicial Council and to
33 the Ethics Committee of the Guam Bar
34 Association.
35
36
37
38

39 Until such rules and regulations are adopted
40 by the Judicial council, the definitions relating
41 to the practice of law as contained herein and in
42 the common law definitions as to the practice of
43 law shall apply.

44 (d) It shall be unlawful for any person to
45 practice law within the Territory of Guam unless
46 that person is an attorney admitted to practice

1 within the Territory of Guam. Any fees collected
2 by any person who willfully engages in the illegal
3 practice of law shall be returned to the clients
4 involved. Such illegal practice shall not be a
5 crime, and any violations shall be prosecuted
6 civilly as herein provided.

7 (e) The Ethics Committee of the Guam Bar
8 Association shall investigate any allegation or
9 evidence of illegal practice of law within the
10 Territory of Guam. A complaint shall not be
11 necessary if it comes to the attention of the
12 Ethics Committee or their staff that a violation
13 may have occurred. In such investigations, the
14 Ethics Committee of the Guam Bar Association shall
15 have the same powers it has when investigating
16 complaints against attorneys.

17 (f) When the Ethics Committee discovers that
18 any person is illegally practicing law within the
19 Territory of Guam, it shall bring an action in the
20 Superior Court of Guam to enjoin and restrain such
21 illegal practice of law temporarily and
22 permanently. If the court finds by a
23 preponderance of the evidence, it shall order the
24 return to clients of fees collected for legal
25 services by such person, the repayment of any
26 losses which any client of such person may have
27 suffered as a result of misconduct or malpractice

1 by such person, and shall order the person
2 illegally practicing law to pay reasonable costs
3 and attorneys fees of the investigation and suit.

4 (g) In addition to other penalties, above
5 indicated, any person who violates an order
6 enjoining him or her from the illegal practice of
7 law shall be punished for contempt of court, which
8 may be brought by the Ethics Committee of the Guam
9 Bar Association or by any person, and in addition
10 to other penalties permitted by law, shall be
11 fined one thousand dollars per day for each day
12 that person practices law contrary to such order
13 and for each day that such person holds himself or
14 herself out as practicing law contrary to such
15 order, as well as for the reasonable costs and
16 attorneys fees of any investigation and suit.

17 (h) The burden of proof any proceeding
18 alleging illegal practice of law shall be by the
19 preponderance of the evidence, and the burden of
20 proof shall be on the Ethics Committee or person
21 alleging the illegal practice of law.

22 (i) Any person may bring an action to enjoin
23 and restrain, temporarily and permanently, the
24 illegal practice of law within the Territory of
25 Guam, provided that the Ethics Committee of the
26 Guam Bar Association shall be named as a party
27 respondent. The Ethics Committee shall have 60

1 days to file an answer, claim, or other pleadings,
2 provided that the court can temporarily enjoin or
3 restrain the illegal practice of law during such
4 period. In such action, the Ethics Committee may
5 bring any cause of action against a person who has
6 illegally practiced law to the same extent as if
7 it had originally brought the suit.

8 (j) In any suit to enjoin the illegal
9 practice of law, depositions and discovery may be
10 had by the Ethics Committee of the Guam Bar
11 Association and other parties immediately upon
12 filing of the case, and the court may accelerate
13 the times allowed for discovery.

14 (k) Upon request of the Ethics Committee of
15 the Guam Bar Association or the Attorney
16 therefore, the Attorney General of Guam may apply
17 to the Superior Court of Guam for a search warrant
18 to be executed by the Guam Police Department for
19 evidence of a violation of this section, which
20 shall be granted if the court finds that probable
21 cause exists that a violation of law has occurred
22 in that someone has illegally engaged the practice
23 of law and that evidence of such violation is
24 located at the place to be searched.

25 (l) In any action for malpractice or
26 misconduct brought against a person who has
27 engaged in the illegal practice of law, the work

1 performed by the person shall be held to the same
2 quality standards and ethical standards as would
3 be appropriate for the person if the person was an
4 attorney admitted to practice in the Territory of
5 Guam."
6
7

8 Section 2. A new section 28065 is added to the
9 Government Code of Guam to read as follows:

10 "Section 28065. When written fee agreements which
11 required for attorneys.

12 (a) In representing a client, an attorney
13 shall have a written fee agreement which is signed
14 by the client if:

15 (1) The contemplated fee is in excess
16 of \$500, or

17 (2) An appearance is required or
18 reasonably contemplated before any court
19 or agency by the attorney, or

20 (3) The fee is contingent.

21 (b) Such fee agreements shall be in clear
22 and concise language and shall clearly spell out
23 the general nature of the work to be done by the
24 attorney and the financial obligations of the
25 client to pay for such work. In uncontested
26 matters, it shall spell out the financial
27 obligations if the matter becomes contested. If

1 the fee is based on an hourly rate, the hourly
2 rate shall be stated.

3 (c) An attorney shall have his client sign
4 such a fee agreement within 48 hours of the time
5 the attorney is retained unless that is impossible
6 because the client is outside of Guam or
7 incarcerated or otherwise unavailable, in which
8 case a fee agreement shall be signed at the
9 earliest possible time.

10 (d) Within 90 days of this act becoming law,
11 the Ethics Committee of the Guam Bar Association
12 shall promulgate various model fee agreements and
13 make the same available to Bar Association Members
14 for use or modification, but use of such model
15 forms shall not be mandatory as long as the form
16 used complies with this section.

17 (e) In the absence of a required fee
18 agreement with the client, claims for attorneys
19 fees incurred before a fee agreement was signed
20 shall be unenforceable.

21 (f) Any attorney who is representing clients
22 without written fee agreements on the effective
23 date of this section shall have 60 days to obtain
24 a written fee agreement between the attorney and
25 the clients.

26 (g) Nothing herein shall prevent the parties
27 from amending any fee agreement, nor will it

1 prevent an attorney raising his hourly rates upon
2 60 days notice to the client if that right is
3 reserved in the agreement.

4 (h) An attorney may withdraw from
5 representation of a client where a client has
6 failed to meet the financial obligations as set
7 forth in a written fee agreement upon ten (10) day
8 notice to the client.

9 Where the attorney is representing a client
10 in a matter before a court within the Territory of
11 Guam and the attorney elects to withdraw as
12 provided in this subsection, attorney may withdraw
13 by filing with the court an affidavit stating with
14 particularity the failure of the client to meet
15 the financial obligations as set forth in the
16 written fee agreement and a notice of withdrawal.

17 The withdrawal of an attorney representing a
18 client as set forth in this subsection above shall
19 be effective upon ten (10) days written notice to
20 the client and upon filing of the affidavit and
21 notice of withdrawal prescribed in this
22 subsection.

23 (i) Subsections (a), (b), (c), (e), (f), and
24 (g) of this section shall become effective 90 days
25 after this act becomes law, with the balance of
26 this act being effective on the date this act
27 becomes law.

1 Section 3. Subsection (f) of Subsection 28019 of the
2 Government Code of Guam is hereby repealed and reenacted to
3 read:

4 "(f) that he/she has graduated from the law
5 school in the United States, its territories or
6 possessions which is [~~either~~] accredited by the
7 American Bar Association or that he/she has
8 previously taken and passed one or more parts of
9 the Guam Bar Exam after graduating from a law
10 school not accredited by the American Bar
11 Association but previously approved by the
12 Judicial Council~~]-or-approved-by-the-judicial~~
13 ~~council,-provided-that-in-the-case-of-a-law-school~~
14 ~~which-is-not-accredited-by-the-American-Bar~~
15 ~~Association,-the-judicial-council-may-only-approve~~
16 ~~law-schools-of-such-stature-that-graduation-from~~
17 ~~said-law-school-would-qualify-a-graduate-thereof~~
18 ~~to-take-the-bar-exam-in-the-state,-territory-or~~
19 ~~possessions-where-the-law-school-is-located]~~. No
20 correspondence law school may be so approved."
21
22
23

LAWILL2.BIL/20-21

COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

Committee Report On Bill 1255

A BILL TO ADD A NEW SECTION 28064 TO THE GOVERNMENT CODE OF GUAM TO REGULATE THE ILLEGAL PRACTICE OF LAW, AND A NEW SECTION 28065 TO THE GOVERNMENT CODE OF GUAM TO REQUIRE ATTORNEYS TO USE WRITTEN FEE AGREEMENTS, TO AMEND SECTION 28109 OF THE GOVERNMENT CODE OF GUAM RELATIVE TO BAR EXAMS, AND FOR OTHER PURPOSES.

PREFACE

The Judiciary and Criminal Justice Committee convened at 9:00 a.m., Wednesday, April 11, 1990, in the temporary Legislative Session Hall at Agana, Guam to hear testimony on Bill 1255. Committee members in attendance, alongside Chairwoman Pilar C. Lujan were Elizabeth P. Arriola, Ted S. Nelson, Edward D. Reyes, and Edward R. Duenas. Also present to join the Committee was Senator Don Parkinson.

OVERVIEW

With the remarkable increase of legal activity in the Territory during the past decade, Senators Don Parkinson and Pilar Lujan introduced Bill 1255 to regulate the illegal practice of law on island. Moreover, the measure includes provisions to protect attorneys and clients by mandating written fee agreements. Lastly, the measure contains a provision to tighten up qualifications for those seeking to take the local bar examination.

COMMITTEE FINDINGS AND RECOMMENDATIONS

Attorney Charles Troutman appeared before the Committee testifying in favor of the measure. Attorney Troutman noted the necessity to have standards in place to regulate the practice of off-island attorneys doing business on island. Attorney Troutman expressed concern with non-locally licensed attorneys from abroad doing work on island.

"What we need to determine is what standards we should apply to situations (where off-island attorneys are practicing on island)," Attorney Troutman testified.

Attorney Troutman also noted that the written fee agreement provisions in the measure are recommended in the model rules of professional responsibility "but aren't required as absolute mandate."

Attorney John Tarantino, Counsel to the Guam Bar Association's Ethics Disciplinary Committee, noted "several complaints from members of the public concerning the unauthorized practice of law." However, Attorney Tarantino noted that Ethics Committee responses to such complaints are presently limited to investigation and referral to the Attorney General as a misdemeanor.

Attorney Tarantino noted that the measure "protects the public" by giving protection to the receiver of advice (in the event of injury and being ill-advised by one who is not authorized to practice law) and provides avenues to allow the Ethics Committee to enjoin such individuals from further practicing law.

Attorney Tarantino also hailed the provisions regarding written fee agreements by noting 80% of the ethical complaints he addresses revolve around attorney-client fee disputes.

Attorney Tarantino also submitted suggested modifications to the written fee agreement provisions (ATTACHMENT I). According to Attorney Tarantino, his modifications would provide a mechanism "that would allow an attorney to withdraw from a case when the client is not meeting financial obligations. And that would clearly outline to both sides that if the client's paying you, here's a contract that's good. It's enforceable against the attorney. On the other hand, if you don't pay the attorney, he can withdraw from the contract. So both sides are protected."

Attorney Tarantino further testified that the measure "clearly defines the relationship between the client and the attorney. They have to have it in writing. If it isn't in writing then the attorney can't collect fees. If it is in writing then the client knows that this is an obligation to pay this debt."

Senator Don Parkinson noted the necessity to ensure clients and attorneys know what obligations each have to the other.

Noting exceptions for definition of the practice of law as included in the measure (e.g. title researchers) Senator Parkinson solicited views from witnesses regarding definitions and exclusions to the practice of law. He also noted receipt of such views from Attorney Oliver Bordallo (ATTACHMENT II).

Attorney G. Patrick Civile responded that notices have been issued to Guam Bar Association members requesting their comments on the measure and have not yet been received. He noted that such views would be forwarded.

Committee Member Ted S. Nelson asked if an attorney's withdrawal must be mutually consented to and Attorney Tarantino noted that the Court presently makes such decision. Attorney Tarantino added that this bill would allow attorneys to withdraw from a case based on a client's failure to fulfill contractual obligation.

Committee Member Nelson asked if an attorney could simply withdraw and Attorney Tarantino noted procedures would still be in place requiring a 10-day notice to the client and then a 10-day notice to the Court noting withdrawal and previous notification to client.

Senator Parkinson suggested that fee disputes (specifically arrears) should be resolved in the Court to prevent arbitrary withdrawal. Attorney Tarantino responded that such fee disputes would be addressed via complaint to the Ethics Committee and that an attorney should be allowed to withdraw in such instances because relationship has soured.

Committee Member Edward R. Duenas inquired if a table or schedule of fee rates is in place. Attorney Civile noted that "it used to be standard for a Bar Association to have a published rate for different types of services. It no longer exists."

Attorney Tarantino pointed out that present laws limit recovery (in personal injury cases) on a graduated scale. Currently, in personal injury cases, attorneys are entitled to 11% of a suit. Attorney Tarantino further stated that criteria exists in evaluating complaints of excessive fees. According to Attorney Tarantino, review of complaints regarding excessive fees could go back as far as six years. "Simply because the party agrees to receive a certain fee is not conclusive," Attorney Tarantino stated.

Committee Member Duenas asked if a client is bound by such agreements and Attorney Tarantino responded that "the ethical rules do not allow the attorney to have the client enter into a binding agreement with regards to fees. The fees are always reviewable."

Committee Member Duenas then asked what purpose such written agreements would serve and Attorney Tarantino noted that it would get everything "out in the open. Verbal agreements on fees leave a lot of room for abuse. We need a law that says there must be a written fee agreement so that if there's any dispute we have it in writing. And we can start with that."

Committee Chairwoman Pilar Lujan inquired if attorneys log and register time and resources expended on a case. Attorney Tarantino pointed out that Ethics Committee investigations of fee disputes start with an accounting of such time and resources.

Subsequent to the public hearing, Mr. Dennis J. Sullivan submitted written testimony objecting to passage of Section 3 of the measure which prohibits non-ABA law school graduates from taking the local bar examination. (ATTACHMENT III)

Mr. Sullivan noted that he recently took the local bar exam and passed all but one portion. He indicated an interest to re-take the exam.

Mr. Sullivan suggested that the measure be "prospective" instead of retroactive and take into consideration himself and local law students who are presently studying in non-ABA accredited law schools.

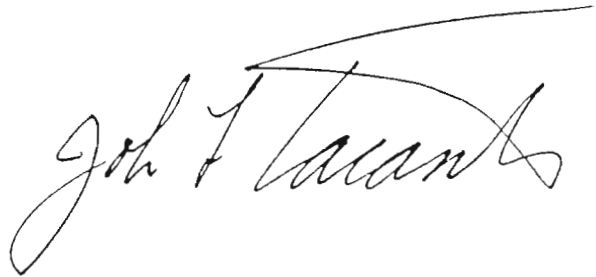
The Committee has taken the testimony and findings into consideration and recommends the following:

- (1) modification of subsection (c) of Section 1 to allow licensed title and escrow companies and their employees to prepare title reports and abstracts of title; to allow government employees and officials to advise and appear as part of their official duties without compensation other than government salary; to allow corporate representatives to appear before a board, agency, or small claims court; and to allow advice to be given to a corporation by a full time employee, officer, or director of the corporation;
- (2) inclusion of a grandfather clause to allow consultants and representatives who previously appeared on behalf of clients before boards and agencies to register for contracting practice and services;
- (3) inclusion of a new subsection in Section 2 to allow attorneys to withdraw from representation of a client when financial obligations are not met. The subsection entails procedures for such withdrawal;
- (4) modification of Section 3 by allowing previous non-ABA law school applicants who have taken or applied to take the local bar examination another opportunity.

(h) An attorney may withdraw from representation of a client where a client has failed to meet the financial obligations as set forth in the written fee agreement upon ten (10) day notice to the client.

Where the attorney is representing a client in a matter before a court within the Territory of Guam and the attorney elects to withdraw as provided in subsection () the attorney may withdraw by filing with the court an affidavit stating with particularity the failure of the client to meet the financial obligations as set forth in the written fee agreements.

The withdrawal of an attorney representing a client as set forth in subsection () above shall be effective upon ten (10) days written notice to the client and upon filing of the affidavit prescribed in subsection () above..

A handwritten signature in cursive script, appearing to read "John T. Lujan". The signature is written in black ink and is positioned on the right side of the page, below the main body of text.

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March 16, 1990

CONFIRMATION COPY

John F. Tarantino, Esq.
Suite 204
134 Chalan Santo Papa
Agana, Guam 96910

Re: Proposed Legislation Restricting Practice of Law.

Dear John:

I reviewed the proposed bill and have the following comments.

In Section 28064(b)(3), the term "action" should be defined. Alternatively, the term "or any proceeding" should be added. Otherwise, the restriction might not apply to non-adjudicatory proceedings before administrative boards such as the ABC, Guam Contractors Licensing Board, etc. The Judicial Council should be given clear authority in this section to enact regulations prohibiting non-lawyers from representing for profit parties seeking licenses, variances, permits, or who are making administrative complaints or grievances, or responding to complaints.

Section 28064(b)(4) lacks the term "contract". At the end of the first sentence, after "real", insert "or personal" property. Documents creating security interests in personal property are often more complex than for real property. Yet, the draft only prohibits non-lawyer preparation of real property security instruments.

In Section 20864(b)(7), the term "for another" appears twice.

In Section 28064(b)(9), the term "common law" should be defined. Reference could be made to the Restatements of the Law, as in the CNMI. Alternatively, whether certain conduct constitutes the practice of law could be determined by reference to the law developed in a particular jurisdiction, such as California or the federal courts. The comment to

Rule 5.5, Model Rules of	
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Date:	<u>3/16/90</u>

John F. Tarantino, Esq.
March 16, 1990

Professional conduct, begins: "the definition of the [term] practice of law is established by law and varies from one jurisdiction to another." I take it the purpose of Section 28064(b) is to define the term "practice of law." If the definition is too ambiguous, a needless source of litigation will arise. Because the term "practice of law" varies so markedly from one jurisdiction to another, there really is no "common" law on this subject. I therefore recommend a more specific definition. Since we follow California law so much, why not reference that body of law.

Section 28064(b)(10) and the following, un-numbered paragraph seem redundant. Again, this portion of the statute may invite challenge on the basis that the Judicial Council is being given unlimited discretion to define the activities for which a license to practice law is required. Certainly the Legislature can delegate responsibility to the Judicial Council in this area, but the issue would be whether the Legislature has provided clear standards for exercising the Judicial Council's discretion. To avoid this debate, I would eliminate Subsection 10 and in the following paragraph state: In addition to the foregoing, the Judicial Council may specify in its rules and regulations any other conduct or activity which requires the exercise of an attorney's professional judgment or skills.

In Section 28064(c), I recommend a provision including the preparation of title reports and abstracts. Application of complex principles of property law is often required in the course of preparing title abstracts and reports. Nonetheless, title insurance companies rarely rely on attorneys to do this work. In the alternative, the Legislation might permit preparation of title reports by non-lawyers, but prohibit the preparation or certification of title abstracts. The latter are almost always intended for use in a court proceeding. Because this restriction will surely be controversial, the issue should be resolved in the legislation.

I see a major confrontation developing between attorneys and non-lawyers in the area of TPC proceedings. Rather than adopt rules of practice and procedure as it should have long ago, the TPC has created a whole list of unwritten rules. For example, if an application for variances is tabled three times, its considered dead and will not be reconsidered. Most TPC applications are handled by "consultants", most of whom are former DLM employees familiar with the unwritten rules and the TPC's unwritten procedures or lack thereof.

John F. Tarantino, Esq.
March 16, 1990

In Oxford Properties v. TPC and World Bell Inc., Special Proc. No. SP0156-89, the Superior Court requested and was furnished with copies of the practice and procedure rules currently used in several U.S. municipalities. It won't be long before TPC proceedings are governed by procedural rules which require that hearings be conducted in an adjudicative manner. Non-lawyers should not be allowed to represent parties in such proceedings.

On the other hand, surveyors and architects might be allowed to represent clients before the TPC, as they often do. Perhaps, Section 28064(c)(9) can be amended as follows: "No persons except licensed surveyors, architects or attorneys may represent any other person in any proceedings before the Territorial Planning Commission." Again, these restrictions will become the source of great controversy. A handful of non-lawyers have built lucrative "practices" before the TPC. They will hit the roof. I don't see why the Judicial Council should be saddled with this controversy. The proposed Legislation, rather than the Judicial Council, should abolish the current unprofessional and unregulated practice before the TPC.

Controversy will also focus on representation of parties before GEDA. CPAs should be allowed to continue representation of clients seeking qualifying certificates. But otherwise, as with other agencies and departments, professional representation of parties should be limited to attorneys. Then there is the Public Utilities Commission. I see alot of adversarial representation there, especially with the passage of recent legislation giving the PUC jurisdiction to adjudicate billing disputes with GPA. In my view, any representation of clients in these proceedings is legal work.

There will be adverse public reaction if non-lawyers are prohibited from doing what they can do today. Three out of four members of the Judicial Council are lawyers. Lawyers will be accused of creating monopolies for themselves every time the Judicial Council considers amending the rules and regulations. For this reason, as much as possible the statute should specifically list all types of professional representation which will be restricted to lawyers. While not every board and agency has to be mentioned, certainly those which are a source of controversy, such as the TPC, GEDA and the PUC, should be identified. In addition, Section 28064(b)(3) should clearly provide that non-lawyers may not represent or advise other persons with respect to any lawsuit, action, proceeding, application or administrative

John F. Tarantino, Esq.
March 16, 1990

matter of any kind, adversarial or non-adversarial, contested or uncontested.

Regarding written fee agreements, I support the bill but suggest a few modifications. No fee agreement should be required where the client has a continuing relationship with his attorney. This is often the case in a commercial practice. For some corporate clients, an attorney or firm may have 20 or 30 different matters pending at any one time. Some get resolved in a matter of days after a little research or a few phone conferences. Even as to individual clients, an exception should be drawn where the attorney has represented the client in two or more unrelated matters within the previous year. A business client might ask for a quick opinion one week, for assistance in negotiating a loan agreement the following week, and a month later, want to sue a tenant for unlawful detainer. Most statutes exempt continuing representation because clients who have such a relationship with an attorney obviously know the attorney's hourly rate.

Section 28605(c) requires a client's signature within 48 hours after an attorney is retained. I would make it 30 days, since I usually prepare an engagement letter within a day or two after the first meeting, but must then have the client come in to sign, or send the letter by mail, which takes a few days. Very few lawyers have form fee agreements, because few have practices limited to one area, such as divorce or adoption.

Section 28605(e) is too harsh. The most common penalty for failing to have a written fee agreement is a limitation on compensation to quantum meruit (ie. the reasonable value of services). If the attorney and client cannot agree what that is, the court would decide what the attorney gets. The long delay, hassle of going to court and forced reliance on a busy judge to value a lawyer's work provides more than enough incentive to comply with the law.

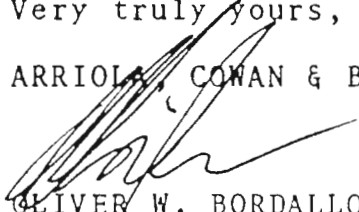
Section 28605(f) is not necessary. This Subsection should be eliminated or it should expressly provide for prospective operation only. There are many attorneys who don't write fee agreements. They would have to search through hundreds of files, then spend hundreds of hours convincing a large number of clients to review, approve and sign fee agreements. Requiring written fee agreements is a good idea. But forcing attorneys who have relied on the common law to negotiate with and explain written fee contracts to all his or her clients makes no sense.

John F. Tarantino, Esq.
March 16, 1990

I hope the above comments are helpful. I would be happy to work with the drafters of this legislation on any revisions desired.

Very truly yours,

ARRIOLA, COWAN & BORDALLO



OLIVER W. BORDALLO

OWB/eq
D#0218U

cc: Duncan G. McCully, Esq.
Donald C. Williams, Esq.
Jose I. Leon Guerrero, Esq.
June S. Mair, Esq.
Richard L. Johnson, Esq.

To: The Guam Judicial Council
From: Dennis J. Sullivan
#10-134
970 S. Marine Drive
Tammuning, Guam, 96911-3403

Subject: Opposition to Bill 1263 and Bill 1255 re Bar Education
and exams.

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Time	<u>10:20 A.M.</u>
Date	<u>4/20/90</u> 202866

It is respectfully submitted that the above bills would do harm to individual bar applicants and Guam in general. I have made a list of issues applicable to my application and of others so situated as well as general issues.

1. There are many attorneys who are not members of the A.B.A. for various reasons. Usually, as far as I know, the main argument of non-A.B.A. attorneys is the stand or view taken by the A.B.A. One such controversial issue is certainly abortion and another is the commonwealth (if a view is taken at all)

2. Other attorneys might specialize in a given area that they feel the A.B.A. as a national association in makeup does not direct itself to. Rural attorneys or local regardless of their specialty fell far removed from the A.B.A.

3. The many different bar associations and groups make for much reading, time and dues. Especially for newly starting out attorneys especially in private practise the latter can become burdensome and expensive.

4. The uniqueness of the 9th circuit in its relation to Guam is another issue. Can they adequately serve us is the question? Or should we simply send a representative?

In conclusion in no way am I discrediting the A.B.A. as I have used much of their material in Law School and referance. Indeed it is an excellent group but I question it in regards Bill 1263. Why not make it voluntary?

Looking at Bill 1263 and its applicability to the exam a few more issues arise. Namely, it would BAR ME FROM RE-TAKING THE EXAM. Having attended both an A.B.A. school and a non-A.B.A. school I am not going to raise unnecessarily which school or schools are better. I would like to take the exam again(which I feel is a good exam) and am sure that there are other candidates in my same situation or group. I failed the local or essay portion by 2.3 points but passed the national section as well as the ethics exam last July or rather July of 1989.

Usually bills of this nature take a "Prospective" approach rather than a retroactive one. I am thinking not only of the above situation that applies to me but of the current first year student who has relied on Guam's law in regards to taking the exam and now who would be also barred. For whatever reason this student is in a non-A.B.A. school and has already invested his time and money. Usually the student has selected such a school due to locality, night school availability, costs and availability of instruction in certain specialized areas. To deny this student the right to take the exam is patently unfair and I suggest a "window" period where Bill 1263 would take effect. Looking at that class of student assuming a night school which is four years and adding another year for a grace period Bill 1263 should take effect (if at all) five years hence.

Besides the above two issues which relate to legal education I have enclosed the California informational booklet that shows study under a Judge, lawyer, and even correspondance school. Not being an advocate of these methods one cannot help have respect for those who earned their education this way. Personally, I feel a college education and then law school is the proper route but note Article Two:

Do we want to bar this lady from taking our exam? Having already said I don't agree with this method due to its difficulty one has to admit there is merit in

Article three describes another lawyer who obtained her license the "hard way"-do we want to bar her from taking the exam?

Article four has to be the most difficult way of all. I could never understand how someone could do correspondance yet here is a very bright individual. Again, do we bar him too?

The last article refers to bar associations that do not even include a member of the bar. I believe these are consumer oriented groups but only include the article to show the various forms of associations.

Lastly, besides the law students, previous bar applicants and present attorneys we should discuss the reciprocity issues in regards to Bill 1263.

To my knowledge Washington D.C. allows reciprocity after so many years in regards to Guam. Would they under Bill 1263? California likewise has a lawyers exam and what would be the effect in California? I know many members are from various states and Oregon comes to mind as they administrate the Guam exam. What of these states in regards to mobility of attorneys? The modern thinking is to treat lawyers as commerce and certainly here in the Pacific we are of an International posture.

In conclusion I respectfully submit to the council that we keep our "doors open". I have used much California thinking only because that is where this issue has caused much thinking and litigation. The underlining is not mine yet the person who sent the articles. And again if Bill 1263 is to become a reality there should be at least a five year "window" period or waiver for those students, bar applicants and attorneys affected. I believe the bar would be a more interesting and energetic group and benifit Guam on the whole.

Sincerely,

Dennis J. Sullivan
Dennis J. Sullivan

What do lawyers do?

Lawyer what you have learned from Perry Mason returns on television, the practice of law is not all courtroom drama. In fact, many practicing lawyers rarely see the inside of a courtroom. And many more do not even practice law, but work in business, government and other law-related fields.

A practicing lawyer's job involves investigative work and research. It means preparing legal documents such as wills or trust agreements. It includes counseling clients who need help with all kinds of problems – from property ownership to job discrimination to business mergers. It is helping settle disputes over child custody arrangements, patent rights, partnership and corporate problems, and more. Of course, it can involve representing clients in court in all kinds of civil and criminal cases. But, before the case goes to court, many hours of preparation usually take place in the lawyer's office.

What qualities do I need to become a lawyer?

Just like doctors, plumbers and journalists, lawyers come in all sizes, shapes and types. There are no hard and fast rules on what it takes to become a lawyer, but certain qualities can be important. Like many other jobs, the practice of law requires intelligence, common sense, sound judgment, hard work and, often, long hours. Stability and perseverance are characteristics that will serve you well both as a law student and a lawyer. The ability to express yourself clearly and logically in writing and speaking is essential.

When you practice law, you will be working with people – clients, other attorneys, witnesses, judges, jurors, your employer and employees. So, it helps to understand human nature and to be diplomatic in dealing with people.

Important deadlines are involved in almost everything a lawyer does – from dealing with clients to filing papers in court. Therefore, going about your work in an organized way is vital.

3

How can I prepare for law school?

Although there is no required undergraduate pre-law program, a number of college courses can help you prepare for both law school and the practice of law.

For example, you should develop the skills you need to express yourself well by taking courses in writing, composition and speech. You should have a good background in spelling, grammar and punctuation.

History, sociology and political science courses can give you a useful understanding of government and society. Courses in philosophy, logic and computer sciences can help you learn to analyze problems and arguments. A knowledge of accounting can be useful in running a law office and in dealing with clients' business problems. Undergraduate law courses, such as business, labor or constitutional law, may help you decide whether you want to become a lawyer. However, you should know that these law-related courses will not necessarily give you a "head start" on law school.

There are additional ways to help prepare for law school and law practice. You can join debating societies to sharpen your speaking abilities. You can practice your writing skills by submitting articles to school publications. You can work in student government to increase your leadership qualities and managerial skills. You can learn and earn through part-time and summer jobs with law offices, investigators and claims adjusters. You can observe how public-interest groups and government interact by volunteering to help environmental, consumer, civil rights or other organizations.

When you begin to study law, you should obtain a free booklet called *Rules Regulating Admission to Practice Law in California* from the office of the Committee of Bar Examiners, The State Bar of California, P.O. Box 7908, San Francisco, California 94120. The committee is the State Bar body that examines the qualifications of people who apply to practice law in California, enforces the requirements for admission to law practice, and accredits law schools. (See #4.)

4

Where can I get a legal education?

In California, you currently can study law at law schools, by correspondence, in a law office under the supervision of an attorney, or in a judge's chambers.

There are three kinds of law schools in California: Some are approved by the American Bar Association; some are accredited by the State Bar's Committee of Bar Examiners, and others are unaccredited.

Law schools approved by the ABA meet certain requirements dealing with a school's faculty, educational program, scholastic standards and other factors.

The Committee of Bar Examiners has accredited all law schools that are ABA-approved, plus a number of additional schools in California. For the most part, the committee's standards for accreditation deal with the same factors as ABA standards. Most differences are a matter of degree.

If you study at an unaccredited law school, by correspondence, in a law office or in a judge's chambers, you must take and pass a First Year Law Student's Examination before you can receive credit for your first year of law study. Even if you have studied law for more than one year when you pass this examination, you usually will receive credit for only one year of study. You should know that only a small percentage of students who take it ever pass the First Year Law Student's Examination.

California currently is one of just a few states that recognizes a variety of ways – in addition to study at an accredited law school – to qualify to take the bar examination. However, in 19 the State Bar's Board of Governors voted to either the state legislature or the state Supreme Court to require unaccredited schools to meet accreditation standards within five years or close. The bar also is seeking to end the state of law through correspondence schools, in a law office or in a judge's chambers as a way preparing to take the bar examination.

These decisions followed a report showing, among other things, that only a very few people study law by correspondence or in law offices

Eminently practical, Shostak took typewriting and shorthand classes at a business college at night, and developed the stenographic skills she later used to transcribe for publication lectures on customs law Stein gave at USC's University College right after World War II.

"I wanted to go on for a law degree, but I just couldn't afford to stop work to go back to law school," Shostak says. And there were few law school options open to her, anyway. Loyola wouldn't take women at that time. USC had no night school, and UCLA's law school hadn't even been established.

Instead, Shostak registered with the State Bar as an apprentice, read law in Stein's office, took the bar exam, and passed it in 1945. She was very surprised she passed the bar so easily. "Our practice area was so specialized that I didn't think I would," she says.

She still regrets that she never went to law school, and says she might have started out her practice with more confidence had she possessed a law degree. But she notes with pride that she is one of the very few who are successful in being admitted to the bar with-

See Page 21 — PROFILE

#3

She Became Self-Taught Lawyer Against All Odds

#2
By SANDRA TOMPKINS
Fresno Bee Staff Writer

FRESNO — Veldonna Tullis Wyatt spent four years eating, sleeping and reading lawbooks. They went with her to the hospital for four surgeries and to the funeral home for her mother-in-law's funeral.

Her studies were so important to her that, after being diagnosed with cancer, she chose surgical breast removal over the more time-consuming chemotherapy.

Her reward?

This 50-year-old woman passed the grueling bar examination the first time she tried even though she never attended law school.

Wyatt became an attorney by reading the law, one of six who used that method this year compared to 2,020 who passed after attending law school.

Now an associate with the law firm of Smurr & Henry, her journey began five years ago when she began working as a legal secretary and took classes to become a paralegal.

Her boss, attorney Nicholas Lucich, suggested she go to law school instead.

"At first, I thought he was kidding," Wyatt said. "Law school? There's no way I could afford it."

Lucich, 36, suggested another option, the Law Office Study Program, which Wyatt was eager to try. The program involves an attorney or judge supervising the weekly work of the law student.

"I spent an average of five hours a week tutoring her," Lucich said. "We got together every Sunday afternoon. I had to test her each month."



Veldonna Tullis Wyatt leaves Fresno County Courthouse with her mentor, Nicholas

Lucich said he created most of the tests which "was a good review for me, too."

Wyatt studied 20-30 hours a week in addition to working full time and raising three children. Her children, including a fourth who is grown, range in age from 11 to 22.

"There were a lot of sacrifices," she recalled. "I didn't watch television for years. I quit using the pool altogether. We quit going to the mountains. In fact, we quit taking vacations and only left town two or three weekends during the last four years."

She was ill with hepatitis in the 1983 and was hospitalized for a hysterectomy, removal of a bowel abscess and cancer, which led to a mastectomy breast reconstruction surgery.

"It seemed like the worse thing: more determined I became to finish it. Nothing was going to stop me said.

— Asked why she persevered through difficult years to complete her studies, Wyatt said, "I wanted to do something with

Three to the Bar: San

By Joan Smith

OF THE EXAMINER STAFF

Can a rock 'n' roll star, a rock 'n' roll road manager and a Vietnam veteran make it as a San Francisco law firm?

Tune in to Number One Haight Street, where the Fish of Country Joe and the Fish is now Barry Melton, Duncan & Hirshbein. Named volunteer law firm of the month in 1985 and volunteer firm of the year in 1988 by the San Francisco Bar Association, MD&H is a trio of 1960s idealists who skipped college and a traditional

legal education for the rigors of real life.

Melton — former lead guitarist for the group whose "Feel Like I'm Fixin' to Die Rag" was the protest anthem of the Vietnam War era — spent 10 weeks at San Francisco State and studied law while on the road with his band through a correspondence course he calls "Matchbook U."

Now co-chairman of the San Francisco Bar's Juvenile Justice Section, Melton specializes in criminal law, especially juvenile cases. He is one of a handful of lawyers who have passed the Bar exam without actually going to law school. California is the only



Francisco's rock 'n' roll law firm

state that allows correspondence-school students to take the exam.

Melton's partner, Dan Duncan, the original bass player for the band Sopwith Camel and road manager for Santana, Neil Diamond and other stars, lasted only weeks at Ohio University.

"I grew up in Yellow Springs, Ohio (home of Antioch College) and everyone went, so I wanted to do something different," says Duncan. He ran away to sea with Windjammer Cruises in Florida.

After a decade in the music business, Duncan earned his law degree at New Col-

lege Law School in San Francisco. New College had just opened its doors and espoused the then-radical notion that practical legal experience should be a significant part of the law school curriculum.

There, Duncan met Barry Hirshbein, a disillusioned Vietnam veteran from Jersey City who says he was an early fan of Country Joe and his famous refrain, "One, two, three, what're we fightin' for?"

Hirshbein had accumulated 60 credits at various colleges around the country without ever earning a degree before he landed at New College. He is now a respected

landlord/tenant lawyer who also serves 10 to 12 hours a month as a volunteer San Francisco Municipal Court judge. He was co-counsel in a 1985 landmark case that guaranteed the right to a jury trial in small claims cases that are appealed to Superior Court.

Duncan also does landlord/tenant work, but specializes in personal injury cases. They are not getting rich.

"We're not very good at charging people," says Duncan, who, with his partners

— See MELTON, B-2



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lutionality of legislation — with great influence over what human actions are considered "rights" and what are mere privileges subject to legislative revocation — the court's decisions have a decisive impact on the rules of the game, affecting millions who otherwise do not encounter the law in any formal way. Justices are keenly aware of this, and fairly often go beyond formal legal reasoning to cite sociological treatises, political philosophy, economic studies, and even common sense in attempting to assess the probable impact of court decisions.

One may deplore or applaud the fact that the Supreme Court has achieved influence far beyond what would inhere simply in a court of last resort with no power of judicial review, but it would be foolish to deny the reality. Since the court now has, for better or worse, a unique influence on American life, why not broaden its membership beyond the rather narrow discipline of the law?

Why shouldn't its membership be open to economists, political scientists, historians, sociologists, philosophers — even poets or novelists — who could bring a different perspective to bear on its decisions? The inclusion of learned people from other disciplines might deter the aggrandizement of all societal actions by the minions of law. At the least, the judges and attorneys remaining on the court would have to confront informed

objections to or assessments of their actions from among their colleagues. Insofar as the court really operates in a collegial manner, the inclusion of non-lawyers would tend to make all members better informed and inclined to approach problems from a broader perspective.

A Few Suggestions

My own first choice would be Thomas Sowell, the philosopher and economist now

#S **Why shouldn't its membership be open to economists, political scientists, philosophers — even poets or novelists?**

resident at Stanford's Hoover Institution. He has challenged more sacred cows than any current prominent writer, and he has done so in a way that provides a model of how to think responsibly about complex social phenomena (see his "Markets and Minorities" for a *tour de force* in miniature, or "Knowledge and Decisions" for an exhaustive treatment). His intellect is so powerful th.

FEB 27 '90

TWENTIETH GUAM LEGISLATURE
FIRST REGULAR SESSION

Bill No. 1255(LS)

Introduced by:

Don Parkinson
Pilar C. Lujan

[Handwritten signatures and names: E.P. Amador, M.P. ... INCRUTHY, J.P. AGUIAR, ...]

A bill to add a new section 28064 to the Government Code of Guam to regulate the illegal practice of law, and a new section 28065 to the Government Code of Guam to require attorneys to use written fee agreements, to amend section 28019 of the Government Code of Guam relative to bar exams, and for other purposes

Section 1. A new section 28064 is added to the Government Code of Guam to read as follows:

"Section 28064. Illegal practice of law.

(a) Within 180 days of the effective date of this act, the Ethics Committee of the Guam Bar Association shall promulgate proposed rules and regulations which define the acts which constitute the practice of law within the Territory of Guam.

Such rules and regulations shall then be submitted to the Judicial Council for approval or modification and adoption. Thereafter, such rules and regulations may be amended from time to time by the Judicial Council.

1 (b) The Rules and Regulations shall provide
2 that the following constitutes the practice law:

3 (1) Activities which relate to the
4 rendition of services for others that call
5 for the professional judgment of an Attorney

6 (2) Representing or advising any other
7 person in any criminal matter for any
8 compensation, direct or indirect.

9 (3) representing any other person or
10 advising any other person as to any lawsuit
11 or action before any court, board, agency, or
12 administrative tribunal, except as
13 specifically allowed by the rules and
14 regulations to be promulgated pursuant to
15 this act or specifically allowed by this act.

16 (4) Preparation for another of any
17 deed, lease, mortgage, promissory note or
18 other document transferring an interest in
19 real property, evidencing a debt, or creating
20 a security interest in real property. This
21 subsection shall not apply to a full time
22 employee of a bank, savings and loan
23 corporation, loan company, finance company or
24 vendor extending credit to another in the
25 normal course of business. This subsection
26 shall not apply to an employee preparing
27 mortgage and loan documents for credit

1 transactions extended by his employer in the
2 regular course of business, provided that the
3 employee is not compensated on a per document
4 basis and the customer is not charged an
5 extra fee for the preparation of the
6 documents. This subsection shall also not
7 apply to the preparation of listing
8 agreements, offers and acceptance of offers,
9 and other documents incidental to listing and
10 selling real property which are prepared by
11 licensed real estate brokers or salesmen, but
12 such persons may not prepare documents for
13 recording at the Government of Guam
14 Department of land management.

15 (5) Preparation of articles of
16 incorporation or by-laws for a corporation
17 for any compensation, direct or indirect.

18 (6) Advice to another or preparation of
19 documents for another relating to
20 bankruptcies.

21 (7) Preparation for another of court
22 documents for another to be filed before any
23 court or judicial tribunal.

24 (8) Preparation for another of powers
25 of attorney.

26 (9) Acts which would constitute the
27 practice of law under the common law, except

1 as otherwise specifically provided in this
2 act.

3 (10) Such other acts which the Judicial
4 Council feels reasonably should be performed
5 by an attorney to protect the general public.
6

7 This subsection shall not be considered a
8 limitation as to the definition of what
9 constitutes the practice of law. Other items and
10 acts which constitute the practice of law may be
11 included in the rules and regulations by the
12 Judicial Council.

13 (c) It shall not be considered the illegal
14 practice of law:

15 (1) To perform legal services for or
16 appear in court for oneself.
17

18 (2) To appear in small claims court as
19 may otherwise be permitted by court
20 rules;
21

22 (3) For an employee or agent of an
23 attorney admitted to practice in Guam to
24 prepare documents, do research, and
25 interview clients under the direct
26 supervision of an attorney admitted to
27 practice in Guam, provided that the
28 attorney shall be responsible for such
29 acts.
30

31 (4) For a certified public accountant or
32 tax practitioner enrolled before the
33 Internal Revenue Service or the
34 Department of Revenue and Taxation to
35 offer tax advice, tax preparation, or to
36 represent clients before tax tribunals
37 to the extent otherwise permitted by
38 law.
39
40

1 (5) The preparation of income tax
2 returns for others if licensed to do so
3 by the Department of Revenue and
4 Taxation.

5
6 (6) For a lawyer admitted to practice
7 in another state or territory who is
8 Associated with a lawyer admitted to
9 practice in Guam to work on a specific
10 legal matter provided they obtain court
11 approval on a case by case basis from
12 the Superior Court of Guam or the
13 District Court of Guam.

14
15 (7) Military Lawyers and Lawyers may
16 appear before Military Tribunals or give
17 advice to military personnel.

18
19 (8) A Person who is admitted to
20 practice in some other state or
21 territory of the United States may
22 advise or represent the Government of
23 Guam or the Government of the United
24 States on legal matters.

25
26 (9) Licensed surveyors may appear
27 before the Territorial Planning
28 Commission.

29
30 (10) Government Attorneys who are
31 employed by the Government of Guam
32 Pursuant to subsection 28019.1 of the
33 Government Code
34

35 Until such rules and regulations are adopted
36 by the Judicial Council, the definitions relating
37 to the practice of law as contained herein and in
38 the common law definitions as to the practice of
39 law shall apply.

40 (d) It shall be unlawful for any person to
41 practice law within the Territory of Guam unless
42 that person is an attorney admitted to practice
43 within the Territory of Guam. Any fees collected
44 by any person who willfully engages in the illegal

1 practice of law shall be returned to the clients
2 involved. Such illegal practice shall not be a
3 crime, and any violations shall be prosecuted
4 civilly as herein provided.

5 (e) The Ethics Committee of the Guam Bar
6 Association shall investigate any allegation or
7 evidence of illegal practice of law within the
8 Territory of Guam. A complaint shall not be
9 necessary if it comes to the attention of the
10 Ethics Committee or their staff that a violation
11 may have occurred. In such investigations, the
12 Ethics Committee of the Guam Bar Association shall
13 have the same powers it has when investigating
14 complaints against attorneys.

15 (f) When the Ethics Committee discovers that
16 any person is illegally practicing law within the
17 Territory of Guam, it shall bring an action in the
18 Superior Court of Guam to enjoin and restrain such
19 illegal practice of law temporarily and
20 permanently. If the court finds by a
21 preponderance of the evidence, it shall order the
22 return to clients of fees collected for legal
23 services by such person, the repayment of any
24 losses which any client of such person may have
25 suffered as a result of misconduct or malpractice
26 by such person, and shall order the person

1 illegally practicing law to pay reasonable costs
2 and attorneys fees of the investigation and suit.

3 (g) In addition to other penalties, above
4 indicated, any person who violates an order
5 enjoining him or her from the illegal practice of
6 law shall be punished for contempt of court, which
7 may be brought by the Ethics Committee of the Guam
8 Bar Association or by any person, and in addition
9 to other penalties permitted by law, shall be
10 fined one thousand dollars per day for each day
11 that person practices law contrary to such order
12 and for each day that such person holds himself or
13 herself out as practicing law contrary to such
14 order, as well as for the reasonable costs and
15 attorneys fees of any investigation and suit.

16 (h) The burden of proof any proceeding
17 alleging illegal practice of law shall be by the
18 preponderance of the evidence, and the burden of
19 proof shall be on the Ethics Committee or person
20 alleging the illegal practice of law.

21 (i) Any person may bring an action to enjoin
22 and restrain, temporarily and permanently, the
23 illegal practice of law within the Territory of
24 Guam, provided that the Ethics Committee of the
25 Guam Bar Association shall be named as a party
26 respondent. The Ethics Committee shall have 60
27 days to file an answer, claim, or other pleadings,

1 provided that the court can temporarily enjoin or
2 restrain the illegal practice of law during such
3 period. In such action, the Ethics Committee may
4 bring any cause of action against a person who has
5 illegally practiced law to the same extent as if
6 it had originally brought the suit.

7 (j) In any suit to enjoin the illegal
8 practice of law, depositions and discovery may be
9 had by the Ethics Committee of the Guam Bar
10 Association and other parties immediately upon
11 filing of the case, and the court may accelerate
12 the times allowed for discovery.

13 (k) Upon request of the Ethics Committee of
14 the Guam Bar Association or the Attorney
15 therefore, the Attorney General of Guam may apply
16 to the Superior Court of Guam for a search warrant
17 to be executed by the Guam Police Department for
18 evidence of a violation of this section, which
19 shall be granted if the court finds that probable
20 cause exists that a violation of law has occurred
21 in that someone has illegally engaged the practice
22 of law and that evidence of such violation is
23 located at the place to be searched.

24 (l) In any action for malpractice or
25 misconduct brought against a person who has
26 engaged in the illegal practice of law, the work
27 performed by the person shall be held to the same

1 quality standards and ethical standards as would
2 be appropriate for the person if the person was an
3 attorney admitted to practice in the Territory of
4 Guam."
5

6 Section 2. A new section 28065 is added to the
7 Government Code of Guam to read as follows:

8 "Section 28605. When written fee agreements which
9 required for attorneys.

10 (a) In representing a client, an attorney
11 shall have a written fee agreement which is signed
12 by the client if:

13 (1) The contemplated fee is in excess
14 of \$500, or

15 (2) An appearance is required or
16 reasonably contemplated before any court
17 or agency by the attorney, or

18 (3) The fee is contingent.

19 (b) Such fee agreements shall be in clear
20 and concise language and shall clearly spell out
21 the general nature of the work to be done by the
22 attorney and the financial obligations of the
23 client to pay for such work. In uncontested
24 matters, it shall spell out the financial
25 obligations if the matter becomes contested. If
26 the fee is based on an hourly rate, the hourly
27 rate shall be stated.

1 (c) An attorney shall have his client sign
2 such a fee agreement within 48 hours of the time
3 the attorney is retained unless that is impossible
4 because the client is outside of Guam or
5 incarcerated or otherwise unavailable, in which
6 case a fee agreement shall be signed at the
7 earliest possible time.

8 (d) Within 90 days of this act becoming law,
9 the Ethics Committee of the Guam Bar Association
10 shall promulgate various model fee agreements and
11 make the same available to Bar Association Members
12 for use or modification, but use of such model
13 forms shall not be mandatory as long as the form
14 used complies with this section.

15 (e) In the absence of a required fee
16 agreement with the client, claims for attorneys
17 fees incurred before a fee agreement was signed
18 shall be unenforceable.

19 (f) Any attorney who is representing clients
20 without written fee agreements on the effective
21 date of this section shall have 60 days to obtain
22 a written fee agreement between the attorney and
23 the clients.

24 (g) Nothing herein shall prevent the parties
25 from amending any fee agreement, nor will it
26 prevent an attorney raising his hourly rates upon

1 60 days notice to the client if that right is
2 reserved in the agreement.

3 (h) Subsections (a), (b), (c), (e), (f), and
4 (g) of this section shall become effective 90 days
5 after this act becomes law, with the balance of
6 this act being effective on the date this act
7 becomes law.

8 Section 3. Subsection (f) of Subsection 28019 of the
9 Government Code of Guam is hereby repealed and reenacted to
10 read:

11 "(f) that he/she has graduated from the law
12 school in the United States, its territories or
13 possessions which is [~~either~~] accredited by the
14 American Bar Association [~~or-approved-by-the~~
15 ~~judicial-council,-provided-that-in-the-case-of-a~~
16 ~~law-school-which-is-not-accredited-by-the-American~~
17 ~~Bar-Association,-the-judicial-council-may-only~~
18 ~~approve-law-schools-of-such-stature-that~~
19 ~~graduation-from-said-law-school-would-qualify-a~~
20 ~~graduate-thereof-to-take-the-bar-exam-in-the~~
21 ~~state,-territory-or-possessions-where-the-law~~
22 ~~school-is-located~~]. No correspondence law school
23 may be so approved."
24
25

lawill.bil/20-20

Introduced

TWENTIETH GUAM LEGISLATURE
FIRST REGULAR SESSION

FEB 27 '90

Bill No. 1255(LS)

Introduced by:

Don Parkinson
Pilar C. Lujan

[Handwritten signatures and names: Don Parkinson, Pilar C. Lujan, E.P. Amador, M.P. Amador, J.P. Aguon, J. Cruz, J. B. B. B.]

A bill to add a new section 28064 to the Government Code of Guam to regulate the illegal practice of law, and a new section 28065 to the Government Code of Guam to require attorneys to use written fee agreements, to amend section 28019 of the Government Code of Guam relative to bar exams, and for other purposes

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Such rules and regulations shall then be submitted to the Judicial Council for approval or modification and adoption. Thereafter, such rules and regulations may be amended from time to time by the Judicial Council.

1 (b) The Rules and Regulations shall provide
2 that the following constitutes the practice law:

3 (1) Activities which relate to the
4 rendition of services for others that call
5 for the professional judgment of an Attorney

6 (2) Representing or advising any other
7 person in any criminal matter for any
8 compensation, direct or indirect.

9 (3) representing any other person or
10 advising any other person as to any lawsuit
11 or action before any court, board, agency, or
12 administrative tribunal, except as
13 specifically allowed by the rules and
14 regulations to be promulgated pursuant to
15 this act or specifically allowed by this act.

16 (4) Preparation for another of any
17 deed, lease, mortgage, promissory note or
18 other document transferring an interest in
19 real property, evidencing a debt, or creating
20 a security interest in real property. This
21 subsection shall not apply to a full time
22 employee of a bank, savings and loan
23 corporation, loan company, finance company or
24 vendor extending credit to another in the
25 normal course of business. This subsection
26 shall not apply to an employee preparing
27 mortgage and loan documents for credit

1 transactions extended by his employer in the
2 regular course of business, provided that the
3 employee is not compensated on a per document
4 basis and the customer is not charged an
5 extra fee for the preparation of the
6 documents. This subsection shall also not
7 apply to the preparation of listing
8 agreements, offers and acceptance of offers,
9 and other documents incidental to listing and
10 selling real property which are prepared by
11 licensed real estate brokers or salesmen, but
12 such persons may not prepare documents for
13 recording at the Government of Guam
14 Department of land management.

15 (5) Preparation of articles of
16 incorporation or by-laws for a corporation
17 for any compensation, direct or indirect.

18 (6) Advice to another or preparation of
19 documents for another relating to
20 bankruptcies.

21 (7) Preparation for another of court
22 documents for another to be filed before any
23 court or judicial tribunal.

24 (8) Preparation for another of powers
25 of attorney.

26 (9) Acts which would constitute the
27 practice of law under the common law, except

1 as otherwise specifically provided in this
2 act.

3 (10) Such other acts which the Judicial
4 Council feels reasonably should be performed
5 by an attorney to protect the general public.
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7 This subsection shall not be considered a
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10 acts which constitute the practice of law may be
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13 (c) It shall not be considered the illegal
14 practice of law:

15
16 (1) To perform legal services for or
17 appear in court for oneself.

18
19 (2) To appear in small claims court as
20 may otherwise be permitted by court
21 rules;
22

23 (3) For an employee or agent of an
24 attorney admitted to practice in Guam to
25 prepare documents, do research, and
26 interview clients under the direct
27 supervision of an attorney admitted to
28 practice in Guam, provided that the
29 attorney shall be responsible for such
30 acts.
31

32 (4) For a certified public accountant or
33 tax practitioner enrolled before the
34 Internal Revenue Service or the
35 Department of Revenue and Taxation to
36 offer tax advice, tax preparation, or to
37 represent clients before tax tribunals
38 to the extent otherwise permitted by
39 law.
40

1 (5) The preparation of income tax
2 returns for others if licensed to do so
3 by the Department of Revenue and
4 Taxation.

5
6 (6) For a lawyer admitted to practice
7 in another state or territory who is
8 Associated with a lawyer admitted to
9 practice in Guam to work on a specific
10 legal matter provided they obtain court
11 approval on a case by case basis from
12 the Superior Court of Guam or the
13 District Court of Guam.

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15 (7) Military Lawyers and Lawyers may
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17 advice to military personnel.

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19 (8) A Person who is admitted to
20 practice in some other state or
21 territory of the United States may
22 advise or represent the Government of
23 Guam or the Government of the United
24 States on legal matters.

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26 (9) Licensed surveyors may appear
27 before the Territorial Planning
28 Commission.

29
30 (10) Government Attorneys who are
31 employed by the Government of Guam
32 Pursuant to subsection 28019.1 of the
33 Government Code
34

35 Until such rules and regulations are adopted
36 by the Judicial Council, the definitions relating
37 to the practice of law as contained herein and in
38 the common law definitions as to the practice of
39 law shall apply.

40 (d) It shall be unlawful for any person to
41 practice law within the Territory of Guam unless
42 that person is an attorney admitted to practice
43 within the Territory of Guam. Any fees collected
44 by any person who willfully engages in the illegal

1 practice of law shall be returned to the clients
2 involved. Such illegal practice shall not be a
3 crime, and any violations shall be prosecuted
4 civilly as herein provided.

5 (e) The Ethics Committee of the Guam Bar
6 Association shall investigate any allegation or
7 evidence of illegal practice of law within the
8 Territory of Guam. A complaint shall not be
9 necessary if it comes to the attention of the
10 Ethics Committee or their staff that a violation
11 may have occurred. In such investigations, the
12 Ethics Committee of the Guam Bar Association shall
13 have the same powers it has when investigating
14 complaints against attorneys.

15 (f) When the Ethics Committee discovers that
16 any person is illegally practicing law within the
17 Territory of Guam, it shall bring an action in the
18 Superior Court of Guam to enjoin and restrain such
19 illegal practice of law temporarily and
20 permanently. If the court finds by a
21 preponderance of the evidence, it shall order the
22 return to clients of fees collected for legal
23 services by such person, the repayment of any
24 losses which any client of such person may have
25 suffered as a result of misconduct or malpractice
26 by such person, and shall order the person

1 illegally practicing law to pay reasonable costs
2 and attorneys fees of the investigation and suit.

3 (g) In addition to other penalties, above
4 indicated, any person who violates an order
5 enjoining him or her from the illegal practice of
6 law shall be punished for contempt of court, which
7 may be brought by the Ethics Committee of the Guam
8 Bar Association or by any person, and in addition
9 to other penalties permitted by law, shall be
10 fined one thousand dollars per day for each day
11 that person practices law contrary to such order
12 and for each day that such person holds himself or
13 herself out as practicing law contrary to such
14 order, as well as for the reasonable costs and
15 attorneys fees of any investigation and suit.

16 (h) The burden of proof any proceeding
17 alleging illegal practice of law shall be by the
18 preponderance of the evidence, and the burden of
19 proof shall be on the Ethics Committee or person
20 alleging the illegal practice of law.

21 (i) Any person may bring an action to enjoin
22 and restrain, temporarily and permanently, the
23 illegal practice of law within the Territory of
24 Guam, provided that the Ethics Committee of the
25 Guam Bar Association shall be named as a party
26 respondent. The Ethics Committee shall have 60
27 days to file an answer, claim, or other pleadings,

1 provided that the court can temporarily enjoin or
2 restrain the illegal practice of law during such
3 period. In such action, the Ethics Committee may
4 bring any cause of action against a person who has
5 illegally practiced law to the same extent as if
6 it had originally brought the suit.

7 (j) In any suit to enjoin the illegal
8 practice of law, depositions and discovery may be
9 had by the Ethics Committee of the Guam Bar
10 Association and other parties immediately upon
11 filing of the case, and the court may accelerate
12 the times allowed for discovery.

13 (k) Upon request of the Ethics Committee of
14 the Guam Bar Association or the Attorney
15 therefore, the Attorney General of Guam may apply
16 to the Superior Court of Guam for a search warrant
17 to be executed by the Guam Police Department for
18 evidence of a violation of this section, which
19 shall be granted if the court finds that probable
20 cause exists that a violation of law has occurred
21 in that someone has illegally engaged the practice
22 of law and that evidence of such violation is
23 located at the place to be searched.

24 (l) In any action for malpractice or
25 misconduct brought against a person who has
26 engaged in the illegal practice of law, the work
27 performed by the person shall be held to the same

1 quality standards and ethical standards as would
2 be appropriate for the person if the person was an
3 attorney admitted to practice in the Territory of
4 Guam."
5

6 Section 2. A new section 28065 is added to the
7 Government Code of Guam to read as follows:

8 "Section 28605. When written fee agreements which
9 required for attorneys.

10 (a) In representing a client, an attorney
11 shall have a written fee agreement which is signed
12 by the client if:

13 (1) The contemplated fee is in excess
14 of \$500, or

15 (2) An appearance is required or
16 reasonably contemplated before any court
17 or agency by the attorney, or

18 (3) The fee is contingent.

19 (b) Such fee agreements shall be in clear
20 and concise language and shall clearly spell out
21 the general nature of the work to be done by the
22 attorney and the financial obligations of the
23 client to pay for such work. In uncontested
24 matters, it shall spell out the financial
25 obligations if the matter becomes contested. If
26 the fee is based on an hourly rate, the hourly
27 rate shall be stated.

1 (c) An attorney shall have his client sign
2 such a fee agreement within 48 hours of the time
3 the attorney is retained unless that is impossible
4 because the client is outside of Guam or
5 incarcerated or otherwise unavailable, in which
6 case a fee agreement shall be signed at the
7 earliest possible time.

8 (d) Within 90 days of this act becoming law,
9 the Ethics Committee of the Guam Bar Association
10 shall promulgate various model fee agreements and
11 make the same available to Bar Association Members
12 for use or modification, but use of such model
13 forms shall not be mandatory as long as the form
14 used complies with this section.

15 (e) In the absence of a required fee
16 agreement with the client, claims for attorneys
17 fees incurred before a fee agreement was signed
18 shall be unenforceable.

19 (f) Any attorney who is representing clients
20 without written fee agreements on the effective
21 date of this section shall have 60 days to obtain
22 a written fee agreement between the attorney and
23 the clients.

24 (g) Nothing herein shall prevent the parties
25 from amending any fee agreement, nor will it
26 prevent an attorney raising his hourly rates upon

1 60 days notice to the client if that right is
2 reserved in the agreement.

3 (h) Subsections (a), (b), (c), (e), (f), and
4 (g) of this section shall become effective 90 days
5 after this act becomes law, with the balance of
6 this act being effective on the date this act
7 becomes law.

8 Section 3. Subsection (f) of Subsection 28019 of the
9 Government Code of Guam is hereby repealed and reenacted to
10 read:

11 "(f) that he/she has graduated from the law
12 school in the United States, its territories or
13 possessions which is [~~either~~] accredited by the
14 American Bar Association [~~or-approved-by-the~~
15 ~~judicial-council,~~ ~~provided-that-in-the-case-of-a~~
16 ~~law-school-which-is-not-accredited-by-the-American~~
17 ~~Bar-Association,~~ ~~the-judicial-council-may-only~~
18 ~~approve-law-schools-of-such-stature-that~~
19 ~~graduation-from-said-law-school-would-qualify-a~~
20 ~~graduate-thereof-to-take-the-bar-exam-in-the~~
21 ~~state,-territory-or-possessions-where-the-law~~
22 ~~school-is-located~~]. No correspondence law school
23 may be so approved."
24
25