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The Commonwealth of the Northern Mariana Islands Law Revision Commission Second Quarter 2011 Newsletter July 2011 Volume 2 Number 2



The Law Revision Commission ("LRC") is the official compiler and publisher of the law of the Commonwealth of the Northern Mariana Islands, a U.S. jurisdiction in Micronesia. The LRC, an agency of the Commonwealth government's judicial branch, also recommends legislation.

Prepared for the benefit of the legal community and the general public, this newsletter contains summaries of Commonwealth Superior and Supreme Court cases and Supreme Court Administrative Orders from April 16, 2011 through July 19, 2011. Please be advised that the court opinions summarized herein have not been certified and may be subject to reconsideration.

The summaries contained herein are informational only and do not constitute opinions of the NMI Judiciary.

The LRC would like to thank the NMI Judicial Council and the Commonwealth justices, judges, law clerks and staff for their cooperation and assistance.

SECOND QUARTER 2011 NEWSLETTER

Civil Cases — Supreme Court

Owens v. Commonwealth Health Center
2011 MP 6
Decided June 8, 2011

This opinion interprets portions of Rule 27-4 and Rule 31-1 of the revised Northern Mariana Islands Supreme Court Rules that became effective January 13, 2010. Plaintiff Alvin Owens appealed from a final judgment of the CNMI Superior Court on March 12, 2008. Several days later, Defendant Commonwealth Health Center (“CHC”) filed a notice of cross appeal. After a number of procedural delays, CHC’s initial deadline to file its cross appeal brief was July 8, 2010. CHC motioned the Court for an extension of time to file its brief. The Supreme Court Clerk of Court (“Clerk”) granted the extension, and CHC’s filing deadline was reset to August 9, 2010. CHC did not file its brief by August 9, nor did it petition the Court for a second extension of time. On August 30, twenty-one days after the filing deadline expired, CHC filed its cross appeal and reply brief along with a separate Motion for Leave to File Out-of-Time Brief (“Motion for Leave”). The Clerk rejected CHC’s Motion for Leave, citing Rule 27-4.

CHC subsequently filed a motion asking a single justice to review the Clerk’s denial, arguing that the Clerk lacked the authority to rule on its Motion for Leave. A single justice reviewed CHC’s second motion and issued an order on November 1, 2010. The November order relied on Rule 31-1(b) and concurred with the Clerk’s denial of CHC’s Motion for Leave. CHC then petitioned the full Court to reconsider the order issued by a single justice pursuant Rule 27-4(d)(2)(C).

The full Court recognized that Rule 27-4(a)(2)(B) did not permit the Clerk to deny CHC’s Motion for Leave once the filing deadline expired on August 9. Interpreting Rule 27-4(c)(1)(A), the Court held that a full panel of three justices was required to hear motions to file out-of-time documents when denial of the motion would determine the merits of the appeal. For the purposes of Rule 27-4, the Court found that denial of CHC’s Motion for Leave would be tantamount to dismissal of CHC’s cross appeal. Thus, CHC was entitled to have the full Court consider its Motion for Leave. Because CHC’s motion was properly before the panel, the Court decided the merits of the motion.

In examining CHC’s Motion for Leave, the Court determined that Rule 31-1(b) governed the only procedure whereby a party could file a late brief, noting that CHC had incorrectly cited Rule 26. Rule 31-1(b) states that a motion to file a late brief is “highly disfavored.” As CHC allowed its filing deadline to lapse when it could have motioned for an extension of time, the Court held that CHC’s Motion for Leave was subject to Rule 31-1(b)’s “highly disfavored” standard.

The Court noted that the “highly disfavored” standard was unique to the revised NMI Supreme Court Rules, and thus, it was necessary to provide further guidance. In explaining the significance of “highly disfavored,” the Court analogized the “highly disfavored” language in Rule 31-1(b) to the “excusable neglect” standard found in Rule 4(a) and Federal Rule of Appellate Procedure 4(a). In so doing, the Court stated that, generally speaking, the “highly disfavored” standard meant that the Court would not grant motions to file out-of-time briefs unless the cause for the late filing was beyond control of the motioning party. The Court found that the Assistant Attorney Generals tasked with filing the cross appeal brief had knowingly allowed the filing deadline to lapse. On this ground, the Court determined that CHC could not overcome the “highly disfavored” standard. Accordingly, the Court denied CHC’s Motion for Leave.

SECOND QUARTER 2011 NEWSLETTER**Civil Cases — Supreme Court**

*In the Matter of the Adoption and Change of Name
of Y.M.F.V.*
2011 MP 7
Decided June 23, 2011

On Thursday, June 23, the Supreme Court issued its ruling in the case of *In re Adoption and Change of Name Y.M.F.V.*, vacating a trial court order that denied the adoption petition filed by Dominga F. Villar to adopt a minor child. The Supreme Court held that the trial court should have dismissed the case because the minor child failed to satisfy a residency requirement prior to filing the adoption petition.

Under 8 CMC § 1401(i) and 8 CMC § 1402, a minor child must be physically present and living in the Commonwealth for at least one year before filing a petition for adoption. The trial court ruled that the time the minor child spent in the CNMI on a tourist visa could not count toward this one year requirement because, as a tourist, the child did not intend to stay in the Commonwealth. The Supreme Court disagreed, ruling that the adoption residency statute does not require that the minor child intend to remain in the Commonwealth. Accordingly, the Court held that time spent in the CNMI on a tourist visa can count toward the one year adoption residency requirement.

However, the Supreme Court ultimately determined that the minor child had not been in the Commonwealth for one full year before filing the adoption petition. The Court held that given this fact, the trial court should have dismissed the adoption petition for failure to satisfy the residency requirement. In reaching this decision, the Court stressed that immigration matters in the Commonwealth are now governed by federal law, and the decision did not speak to immigration consequences arising from the potential adoption.

Associate Justice John A. Manglona concurred in part and dissented in part with the majority's opinion. He agreed that the minor child failed to meet the one year adoption residency requirement. However, he argued that because the child fell only a few days shy of meeting this requirement, the Court should have reviewed the trial court's finding that the adoption was not in the minor child's best interests.

**Click on the case title boxes to link to
the full opinions online!**

SECOND QUARTER 2011 NEWSLETTER

Civil Cases — Supreme Court

In re the Estate of Hillblom
2011 MP 5
Decided May 24, 2011

Appellant Sally Bauer, acting on her own behalf and as guardian ad litem for her children Elizabeth and Christopher Bauer, alleged that Larry Lee Hillblom, deceased, fathered her two children, and that as his biological children, they were entitled to a portion of his estate. Appellee, the Larry L. Hillblom Foundation, disputed that Hillblom fathered Bauer's children, but that regardless of her paternity assertion, the probate court forever closed the estate. The Supreme Court held that the Hillblom estate was closed, and that Bauer could not bring any claim against the estate, its distributed assets, or any of the distributees. Therefore, the Court affirmed the trial court's order that denied Bauer's request to reopen the Hillblom estate.

Olaitiman v. Emran
2011 MP 8
Decided July 7, 2011

Emran Emran appealed a trial court order granting his divorce from Maria Olaitiman on the ground of mutual personal indignities, and denying his claim seeking reimbursement of funds that he alleged Olaitiman squandered. The Supreme Court held that because Olaitiman did not plead personal indignities as a basis for divorce, the superior court did not have jurisdiction to grant divorce on the unpled ground absent express or implied consent. The Court found that neither the record nor the trial court order supported that Emran impliedly consented to the unpled divorce theory – that he committed personal indignities – or that the parties litigated this issue at the hearing. Accordingly, the Court held that the trial court erred in granting divorce based on mutual personal indignities, and vacated the divorce decree insofar as it granted divorce on the basis that Emran committed personal indignities toward Olaitiman. However, the Court allowed the divorce decree to stand on the unchallenged and properly pled ground that Olaitiman committed personal indignities toward Emran.

As to the second issue on appeal, Emran argued that Olaitiman squandered funds Emran allegedly obtained through loans and from selling property. Olaitiman denied that she ever received the disputed funds. The trial court denied Emran's claim on the ground that he "did not introduce evidence of an oral agreement, a contract, or proof that the [money] was intended to benefit the marriage." The Supreme Court ruled that these grounds were "at best, tangentially relevant to the reimbursement claims" and held that to "properly evaluate Emran's claims, the court needed to issue factual findings concerning whether Olaitiman received the alleged funds." The Court concluded that without such findings, it could not review whether Emran's claims were properly denied. It therefore vacated the trial court's order denying the reimbursement claim and remanded the case to the trial court for additional factual findings.

SECOND QUARTER 2011 NEWSLETTER

Civil Cases — Supreme Court

New Shintani Corp. v. Quitugua
2011 MP 9
Decided July 20, 2011

In a case of first impression, the Commonwealth Supreme Court was asked to determine whether a plaintiff is required to plead facts establishing an exception to the applicable statute of limitations when the face of the complaint unequivocally shows that the action is time-barred. After a review of divided courts on the issue from other jurisdictions, the Court held that a plaintiff is required to plead facts establishing an exception to the statute of limitations when the face of the complaint shows that the action is time-barred. In so holding, the Court found the trial court's determination that the plaintiff was not required to plead sufficient facts of the exception was erroneous, but nonetheless affirmed the decision because the error was not dispositive due to the unique set of facts in the case, as explained below.

Plaintiff brought suit against Defendant to recover the amount due and owing to it for items purchased by Defendant between April 1994 and September 1995. Defendant moved to Guam in 1999, and Plaintiff brought the lawsuit in April 2003, nearly eight years after the last transaction at issue. The applicable statute of limitations states that the action must be commenced within six years of the cause of action. At the bench trial, Defendant moved for judgment as a matter of law regarding the statute of limitations affirmative defense after Plaintiff had rested its case. The trial court denied the motion and held that Plaintiff was not required to prove that an exception to the statute of limitations existed during its case in chief. Defendant rested its case on the pleadings and again brought a motion for judgment as a matter of law. In response, Plaintiff moved to "re-open" the case, at which time it brought evidence that the statute of limitations was tolled when the defendant moved to Guam. The trial court again denied the motion and reiterated that a plaintiff is not required to affirmatively plead an exception to statute of limitations. The trial court issued its findings of fact and conclusions of law, denied Defendant's motion for a new trial, and Defendant timely appealed.

The Supreme Court found that the trial court erroneously relied on CNMI case law distinguishable from the present case because the CNMI had never before ruled on this specific statute of limitations issue. Upon a review of divided courts in other jurisdictions on the same issue, as well as the Guam Supreme Court, the Supreme Court held that a plaintiff who has a statute of limitations defect on the face of the complaint is required to affirmatively plead facts of an exception to the statute of limitations.

Although the Supreme Court found error in the trial court ruling, it nonetheless affirmed the trial court decision because reversing the decision, which the parties relied upon, "would offend notions of justice to foreclose any recovery on the basis of a previously unarticulated procedural requirement." Furthermore, Defendant did not contest the trial court's factual findings. Accordingly, the Supreme Court affirmed the trial court decision and award.

SECOND QUARTER 2011 NEWSLETTER

Civil Cases — Superior Court

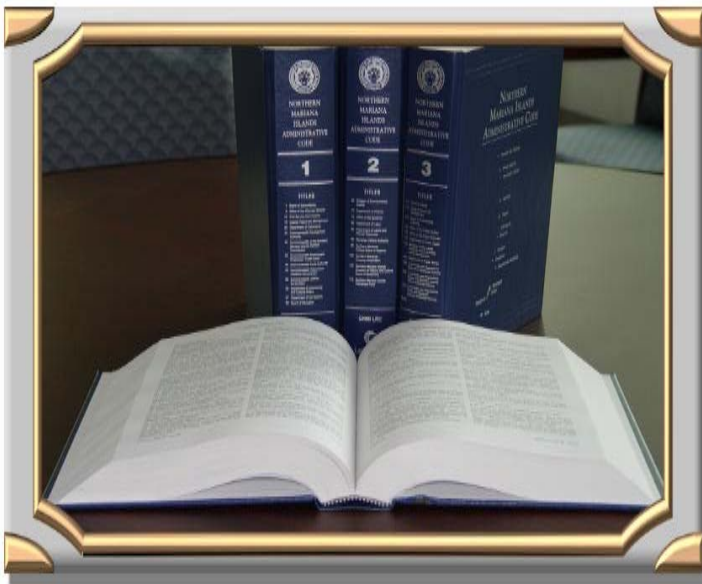
Deleon Guerrero, et al. v. Manibusan, et al.
Civil Action Nos. 02-0015
Amended Order Granting Plaintiff's Motion to Dismiss with Prejudice and Denying Defendant's Motion to Dismiss
Judge Wiseman
Ordered June 20, 2011

In this case, the court granted plaintiffs' Motion to Dismiss Marianas Insurance from this action with prejudice pursuant to NMI R. Civ. P. 41(a)(2). The court concluded that dismissal was warranted so long as defendant did not suffer some plain legal prejudice. The court found that neither the uncertainty because a dispute remains unresolved, the threat of future litigation in a matter, nor the expense incurred in defending against a lawsuit amounts to legal prejudice. Based on those factors, among others, the court found dismissal to be proper.

Guerrero v. Century Ins. Co., Ltd., et al.
Civil Action No. 11-0068
Order Granting in Part Defendants' Motion to Dismiss
Judge Wiseman
Ordered June 27, 2011

This case arose out of a car accident that occurred on January 4, 2011. Plaintiff's vehicle collided with another driver, who was at fault for the accident. Plaintiff agreed with Defendant's insurer to have his vehicle taken to and repaired at Philipine Eagle. When Plaintiff went to pick up his vehicle, however, Philipine Eagle refused to return the vehicle, based on alleged orders from the insurance company not to return the vehicle unless Plaintiff signed a "Release of Claims" form. As a result, Plaintiff filed a complaint alleging: (1) conversion; (2) consumer protection act violations; (3) intentional infliction of emotional distress; (4) negligent infliction of emotional distress; and (5) fraud. Defendant filed a motion to dismiss each of the enumerated claims.

After hearing argument, the court dismissed the claim for intentional infliction of emotional distress finding that Defendant's conduct did not meet the threshold requirement for being "outrageous." The court dismissed the claim for negligent infliction of emotional distress after determining that Plaintiff had failed to set forth sufficient evidence to show that he suffered some type of physical injury. Finally, the court dismissed the claim for fraud finding that Plaintiff had not pled fraud with sufficient particularity as required under NMI R. Civ. P. 9(b).



SECOND QUARTER 2011 NEWSLETTER

Civil Cases — Superior Court

Aurelio, et al. v. Camacho, et al.
Civil Action No. 10-0021
Order Granting Plaintiff's Motion for the Seizure of Real Property
Judge Wiseman
Ordered June 28, 2011

This case arose out of a labor dispute whereby Defendant was found liable for flagrant violations of numerous provisions of the Non-Resident Workers Act and ordered to pay \$157,511.20. The court issued a Judgment in that amount and as of February 11, 2011, Defendant had only paid \$75.00 on said Judgment. As a result, Plaintiff filed a Motion for the Seizure of Real Property pursuant to an Order in Aid of Judgment.

The issue before the court was whether Defendant's claim of a homestead exemption under 7 CMC § 4210(c) prevented Plaintiff from proceeding on Defendant's real property located outside the CNMI. The court held that it did not because an order to Defendant to transfer by deed real property in another jurisdiction would be an order to Defendant, subject to the jurisdiction of this court, and further enforceable by contempt proceedings for disobedience. The court further found that this would best serve the interest of justice because Defendant had two pieces of property and would therefore, have sufficient land remaining to support herself after the sale or transfer of her other property.

Falalimpa, et al. v. Richards, et al.
Civil Action No. 10-0079
Order Granting Plaintiffs' Motion to Amend Complaint
Judge Manglona
Ordered July 7, 2011

Before the Superior Court is Plaintiff's Motion to Amend her Complaint based on new evidence implicating a non-party's potential liability to the underlying cause of action. The plaintiff seeks to add the non-party as a defendant, as well as additional causes of action related to the addition of the new party. The defendants opposed the motion, stating that the plaintiff gave inadequate notice of her new theories of negligence, and allowing the amendment would cause undue burden and expense for the defendants.

The court reviewed well-established principles of amendment to pleadings, and acknowledged that although policy favors liberally granting leave to amend, and trial courts are granted wide discretion to allow amendments, there is still a limit to this discretion. The court also acknowledged that granting leave to amend may be improper if there is undue delay, bad faith, undue prejudice to an opposing party, or a futile amendment.

In balancing the policy considerations in favor of allowing amendment with the defendants' argument that the amendment would cause delay and added expense, the court granted the plaintiff's motion to amend. In so holding, the court reasoned that "the interests of justice require that the Plaintiffs be afforded ample opportunity to seek redress under the law."

SECOND QUARTER 2011 NEWSLETTER

Civil Cases — Superior Court

Torres, et al. v. Ada, et al.
Civil Action No. 10-0211
Order Granting Defendants' Motion to Dismiss
Judge Wiseman
Ordered July 19, 2011

In this case, plaintiffs filed suit against five Commonwealth employees for failing to timely respond or release various public records in violation of the Open Government Act. Each of the named defendants were sued in their official capacities. Upon defendants' motion to dismiss, the court granted dismissal of the named defendants and substituted in their stead, the Commonwealth, as the real party in interest, finding that a suit against a government employee in his/her official capacity is a suit against the government. The court further concluded that because plaintiffs failed to comply with NMI R. Civ. P. 8(a) and 8(e), their suit should be dismissed without prejudice.

Atalig v. Dela Cruz, et al.
Civil Action No. 10-0361
Order Granting Motion to Withdraw as Counsel
Judge Inos
Ordered June 3, 2011

The Office of the Attorney General ("OAG"), counsel for Defendants Dela Cruz and Perez, the Mayor and Treasurer of Tinian, brought a motion to withdraw as counsel for the underlying assertion that it does not possess the constitutional or statutory authority to represent the defendants. Defendants Dela Cruz and Perez opposed the motion. After reviewing the CNMI Constitution and statutes, the Superior Court granted the OAG's motion to withdraw.

Pursuant to the Model Rules of Professional Conduct, a lawyer may withdraw from representing a client if "withdraw can be accomplished without material adverse effect on the client" or "other good cause for withdraw exists." The Commonwealth Rules of Practice require an attorney seeking to withdraw to serve notice on his client and all other parties if the notice is accompanied by notice of appearance of other counsel, or seek leave of court. The Court found the OAG properly followed the Rules of Practice in seeking withdrawal.

The Superior Court held that, although the CNMI Constitution requires the OAG to represent the Commonwealth in all legal matters, the political subdivisions of the central government such as the chartered municipality of Tinian and Aguigan are not within the scope of the term "Commonwealth" to require the OAG's representation. As such, the Superior Court allowed the OAG to withdraw as counsel.

SECOND QUARTER 2011 NEWSLETTER

Criminal Cases — Superior Court

Commonwealth v. Santos, et al.
Criminal Case No. 10-0132
Order Denying Defendant's Motion to Withdraw
Guilty Plea as to Angel Jess Santos
Judge Wiseman
Ordered May 26, 2011

In this case, Defendant moved to withdraw his guilty plea made pursuant to a plea agreement on the basis that the government had not yet filed any new formal charges against the three former co-defendants in this matter. The court denied Defendant's motion finding that Defendant had failed to offer a "fair and just reason" for withdrawing his plea. Additionally, Defendant erroneously relied on the rules of civil procedure and claimed that the government was procedurally barred from opposing his motion. The court admonished counsel for citing the wrong rules and deemed it appropriate to remind counsel that as officers of the court they have certain obligations they must follow which include citing to the appropriate rules of procedure when filing a motion.



Commonwealth v. Quemado
Criminal Case No. 09-1399
Order Granting Stay
Judge Manglona
Ordered June 15, 2011

Before the Superior Court is Defendant's post-trial Motion to Stay Execution of Sentence of Imprisonment and Fines pending his appeal. Defendant was found guilty of reckless driving and driving while under the influence of alcohol ("DUI"). He was later sentenced to serve six months imprisonment for the reckless driving offense, and one year imprisonment for the DUI offense, all suspended except for 33 days.

Throughout the relevant time prior to and throughout the pendency of the case, Defendant was released and remained out of custody on his own recognizance. Defendant brought his Motion for Stay pursuant to Rule 38 of the Commonwealth Rules of Criminal Procedure, which allows a stay of imprisonment pending disposition of an appeal.

The Commonwealth opposed Defendant's motion and argued that Defendant did not satisfy the requirements of Rule 46 of the Commonwealth Rules of Civil Procedure, which governs Defendant's release from custody pending sentencing and appeal. Specifically, the Commonwealth asserted that Defendant posed a danger to others and the community, and his appeal did not raise a substantial question of law or fact sufficient to potentially warrant reversal.

The Superior Court granted Defendant's Motion for Stay. In so holding, the Court found that the Defendant had made all court appearances, lived and worked in the CNMI, had no new criminal or traffic charges, and was not a foreseeable danger to the community. The Court also found that Defendant's appeal raised a question of fact that was not frivolous. Thus, Defendant's imprisonment and fines were to be stayed pending appeal.

SECOND QUARTER 2011 NEWSLETTER

Criminal Cases — Superior Court

Commonwealth v. Jing Xin Xiao
Criminal Case No. 10-0097
Amended Order Re: Sentence
Judge Wiseman
Ordered June 29, 2011

In this case, defendant was found guilty of trafficking of a controlled substance in violation of 6 CMC § 2141 (a) and illegal possession of a controlled substance in violation of 6 CMC § 2142(a). Prior to announcing sentencing, the court found it necessary to make a statement suggesting that the Legislature revisit the mandatory sentencing provided for in 6 CMC § 2141(a). As written, the court can order three separate sentences; however, if the court decides to impose a jail sentence, it is bound to follow the 25-year mandatory minimum regardless of any mitigating factors.

Consequently, the court states that this limitation curbs the discretion of prosecutors and judges over certain offenses or types of offenders and divests the time-honored control over criminal sentences which is the touchstone of a judicial sentence. In addition, based on the gross disproportionality of such mandatory sentencing, the court urged the Legislature to re-examine 6 CMC § 2141(a) and at the very least, include weight classifications which correspond to the length of incarceration.



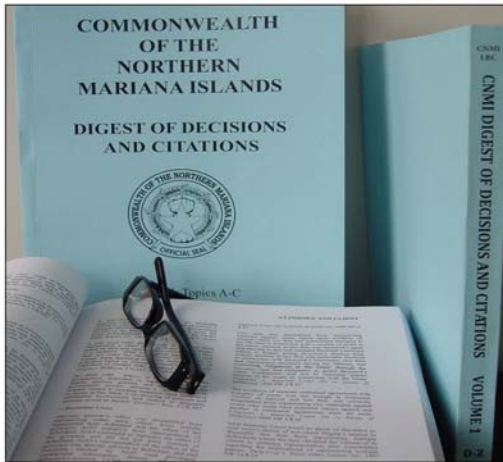
Commonwealth v. Dela Cruz, et al.
Criminal Case No. 10-0111
Order Denying the Government's Motion to Transfer Venue, Granting the Government's Motion to Compel, and Granting the Government's Motion(s) in Limine
Judge Wiseman
Ordered July 8, 2011

Defendant was charged with, among other things, armed robbery and attempted murder. Although the Government had information for over a year regarding a former co-defendant it had planned to use as a witness, it revealed this witness to the defendant only a few days before the start of trial. The Court's pretrial order stated that, except for good cause shown, parties would be precluded from offering substantive evidence through witnesses not properly disclosed. Defendant moved to exclude the witness' testimony on the basis that the Government failed to timely disclose the witness as required by the Court's pretrial order and therefore violated Defendant's right to due process.

The Court denied Defendant's motion, finding that the Government acted in good faith and presented a credible reason for its failure to identify a witness in its earlier disclosures. Furthermore, although the witness was not formally listed earlier, the Court found that Defendant was on notice of the witness' existence and possible testimony. Finally, in order to mitigate any possible prejudice to the Defendant, the Court allowed for a continuance to give Defendant more time to prepare his case and to interview the witness, if necessary.

SECOND QUARTER 2011 NEWSLETTER

Fresh off the Press!

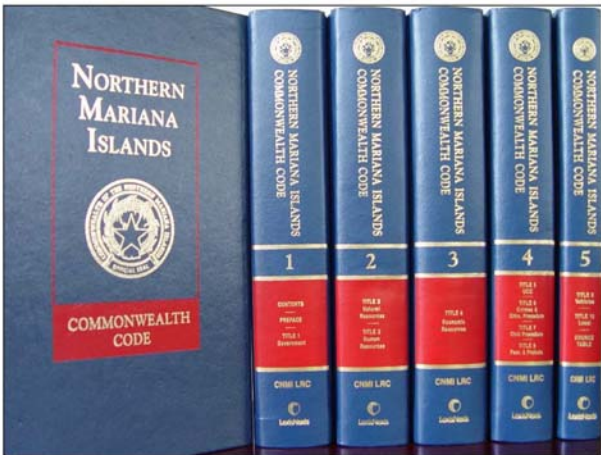
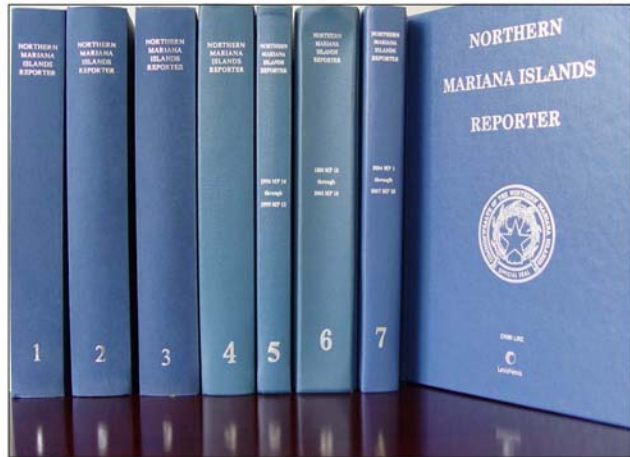


Commonwealth of the Northern Mariana Islands Digest of Decisions & Citations

This comprehensive digest, which analyzes CNMI case law found in the Commonwealth Reporters (1979-1989) and all of the NMI Reporters (Supreme Court cases 1989-2007), will eliminate the current practice of having to consult four separate decision digests. Now available for \$90.

Northern Mariana Island Reporter Volume 7

Consists of head-noted Supreme Court decisions (2004 thru 2007). Volume 7 is now available for \$60. The full set of Reporters (Volumes 1-7), including the comprehensive digest (above) may be purchased for \$450.



Northern Mariana Island 2010 Commonwealth Code Books

CNMI Code through 2010 with case annotations as well as the Constitution, the Covenant, and other legal documents relating to the formation of the CNMI. The full set with index is \$600.

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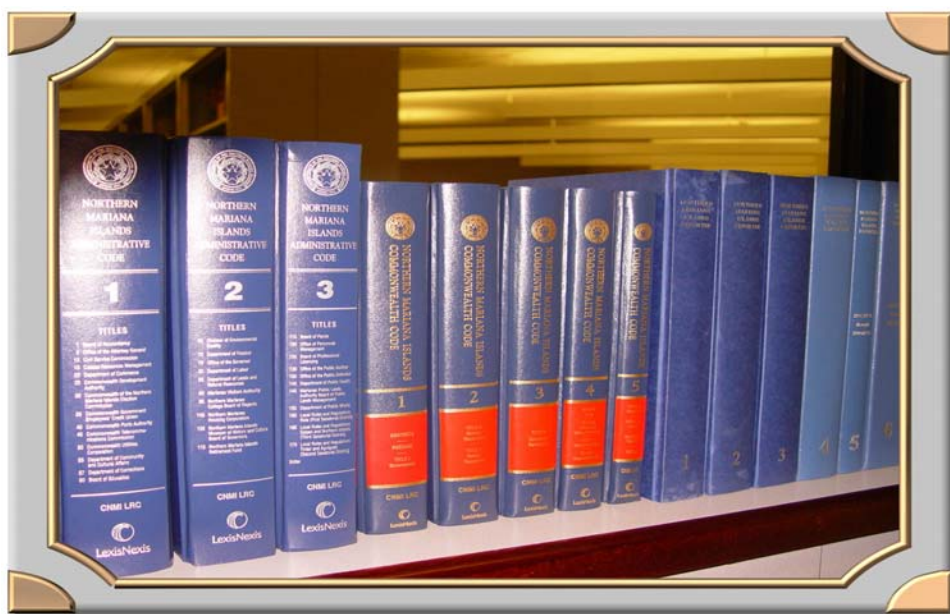
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