

Pacific Islands Committee NEWSLETTER

SUMMER 2018



State justices, judges, clerks of court, mediation clerks, certified mediators and staff attorneys from Saipan, Guam, Palau, American Samoa and the Federated States of Micronesia gather for a three-day seminar on advanced mediation.

Advanced Mediation Seminar in Saipan

In March of this year, I had the privilege of traveling to Saipan as one of three presenters for the Pacific Judicial Council's 2018 Advanced Mediation Seminar, along with Claudia Bernard, chief circuit mediator for the Ninth Circuit Court of Appeals, and Howard Herman, director of the ADR Program for the United States District Court for the Northern District of California. Participants in the seminar included federal and state justices, judges, clerks of court, mediation clerks, certified mediators and staff attorneys from Saipan, Guam, Palau, American Samoa and the Federated States of Micronesia. The goals of the three-day program were to deepen participants'



Chief Magistrate Judge Jan M. Adler has chambers in San Diego

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Judge Grace Leban

Judge Grace Leban is an associate judge in the Traditional Rights Court, a branch of the High Court in the Republic of the Marshall Islands. The Marshall Islands dot the central Pacific just above the equator and west of the International Dateline. They include the well-known Bikini Atoll.

Judge Leban was born and raised on Majuro Island, another major atoll. Both of her parents were indigenous. Her dad worked as a pastor and principal of a missionary school on Majuro. Land interests pass maternally by tradition and through her mother she inherited interests in land on 10 islands.

As a child, Judge Leban spent two years on Oahu while her dad furthered his education. In the 11th grade, she experienced cold weather for the first time, spending that year in British Columbia with family and friends. She finished high school in Honolulu, then went home in 1985 to marry and to start a



District Judge William Alsup has chambers in San Francisco

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family, eventually having four girls and then four boys. As a mother of eight children, Judge Leban has endeavored to balance her work, family and educational pursuits.

Her career began as an assistant office administrator in an elementary school, but soon she became a court reporter and clerk for the High Court, the highest level of trial court. In 1992, Judge Leban moved to the Ministry of Social Services (later Ministry of Internal Affairs). She began as a social worker in programs advancing the well-being of Marshallese youth and women. Later, she held the post of program manager for the Youth Services Bureau, eventually becoming the chief of the Community Services Division and, ultimately, the assistant secretary for the Ministry.

In 2003, she enrolled in the College of the Marshall Islands and received an associate of liberal arts degree. She transferred to Brigham Young University in Hawaii and earned a Bachelor of Science degree in 2008, spending one year on the Oahu campus.

Back in the Republic of the Marshall Islands, she saw a notice for a judicial position with special encouragement for women to apply. She went through a detailed vetting process with the RMI Cabinet, the President of the Nitijela (Parliament) and the Parliament and became an associate judge in the Traditional Rights Court in 2010.

During her judgeship, she continues to pursue higher education. To bolster her judicial skills, she takes courses through the National Judicial College, the Pacific Legal Institute and the Pacific Strengthening Institute. She is enrolled in a legal studies program through the University of the South Pacific and will receive a master's degree in business administration this October.

The Traditional Rights Court is a special-jurisdiction court consisting of three-judge panels that decide land-rights disputes. Cases are initially filed in the High Court and referred to the TRC when an issue of traditional rights arises. TRC judges are selected to include a fair representation of the customary classes of land rights: Iroiylaplap (high chief); Iroiiedrik (lower chief); alap (head of clan); and dri-jerbal (workers of the land). There are more than a hundred clans in the RMI.



Grace Leban, associate judge in the Traditional Rights Court in the Republic of the Marshall Islands.

Land interests in the RMI have traditionally been co-owned by members of the royal family, the head of the clan and those who work the land, each element having its own set of traditional interests. For example, if a deed from a clan head purported to sell land to the U.S. Navy at Kwajalein, the workers of that land could seek a declaration of their land rights.

Judge Leban (along with two others) hears the testimony, receives evidence and decides the land issue based on traditional land custom. There are few lawyers in the RMI (and she herself is not a lawyer). On a typical day, the courtroom is filled at capacity with members of two to three extended families disputing their land rights. Many are familiar faces from the small island community.

She handles about two trials per month (as referrals from the High Court). Upon request, the chief justice of the High Court can appoint a High Court or a district court judge to sit with the TRC to make procedural and evidentiary rulings. The RMI's Constitution requires the High Court to afford TRC decisions substantial weight. The Supreme Court has held that the TRC's findings must be adopted unless erroneous or contrary to law.

Because of the nature of land disputes, one challenge for Judge Leban is the direct impact decisions have on family relationships. Another challenge is the risk of banishment. In the past, other TRC judges have been banished from the clan on account of rulings against the chief. So far Judge Leban has not been banished.

Judge Leban is on her eighth year of a 10-year term. She says if she were 20 years younger, she would aim to acquire her law degree and become the first female chief justice for the High Court. As it stands, she will continue to serve her community on whatever career path lies ahead of her.

I asked Judge Leban to describe the view out her window of her chambers. "Flame trees," she replied. ●

Appreciation to Judge Conseulo Marshall

The Pacific Judicial Council and its members bid farewell and extend a heartfelt thank you to Senior District Judge Consuelo Marshall of the Central District of California for her service as Pacific Islands Committee chair from 2007 to 2017.



Chief District Judge Frances Tydingco-Gatewood of the District of Guam, left, and Senior District Judge Consuelo B. Marshall of the Central District of California share a laugh at the 2017 Ninth Circuit Judicial Conference in San Francisco.

As the Pacific Islands Committee chair for a decade, Judge Marshall worked tirelessly to fulfill the committee's important mission – to improve the administration of justice in the U.S. Territories of Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Marshall Islands and the Federated States of Micronesia.

In addition to the mission of the Pacific Islands Committee, Judge Marshall worked closely with the Department of the Interior and congressional representatives from our island nations to provide funding and support the unique and important goals of the PJC. Judge Marshall's collaboration with the PJC was instrumental in achieving its goals of providing legal education for judges, preserving the island custom and tradition within the confines of existing judicial systems, coordinating with law enforcement agencies and providing public education in the areas of substance abuse and domestic and community relations.

On behalf of its members, who hail from the Supreme Court of the Republic of Palau, the Supreme Court of Guam, the Superior Court of Guam, the Supreme Court of the Commonwealth of the Northern Mariana Islands,

the Superior Court of the Northern Mariana Islands, the Supreme Court of the Federated States of Micronesia, the Chuuk State Supreme Court, the Kosrae State Supreme Court, the Pohnpei State Supreme Court, the Yap State Court, the Trial Division of the High Court of the Republic of the Marshall Islands, the High Court of the Territory of American Samoa, the District Court of Guam and the District Court of the Northern Mariana Islands, the PJC recognizes and thanks Judge Marshall for her generous assistance and support of the PJC in its efforts to improve the administration of justice in each of our island nations.

From Chief Justice Dennis Yamase, FSM Supreme Court: From the Justices and the Staff of the Supreme Court of the Federated States of Micronesia, we would like to send a most heartfelt thank you for all of the assistance rendered to our Court by the Honorable Consuelo Marshall. Judge Marshall's contribution to the betterment of our Court has been truly outstanding and significant. The expertise, commitment, sensitivity, and caring that she has shown in rendering training and assistance to our Court, and other courts in the FSM, has been unsurpassed. She has repeatedly demonstrated this commitment, by making the long trip to the FSM to participate in many of our training programs, including FSM Judicial Conferences. We cannot thank her enough for this assistance to our courts over the years and we hope that she will be willing to continue this assistance to us in the future. Thank you so much Judge Marshall.

From Chief Justice Cyprian Manmaw, State Court of Yap: We, all the personnel and judges of Yap State Court, will always be thankful to the Honorable Consuelo Marshall for all her efforts and support to the Pacific Judicial Council and to the Yap State Court during her tenure as chair of the Pacific Islands Committee. Judge Marshall's incredible efforts, understanding and dedication to all the judiciaries of the Pacific Judicial Council have promoted the rule of law for Yap State Court and in Yap State to a level unseen in the years past and no words can express how thankful Yap State Court is to her and to all her colleagues on the Pacific Islands Committee. Thanks so much, Judge Consuelo Marshall. We will always remember you and how thoughtful and dedicated you have been to our goals. You are a true hero and friend to all of us and to all our families and the people of Yap.



Frances Tydingco-Gatewood is chief district judge for the District of Guam

understanding of mediation, introduce advanced mediation concepts, build mediation skills and provide opportunities to practice mediation techniques through a series of role plays, allow participants to learn from each other, and gain an appreciation of the different contexts in which the participants practice.

The seminar began with an overview of the mediation process in which the presenters discussed the range of approaches to mediation. This was followed by presentations by the participants concerning the ADR programs and rules governing mediation in each jurisdiction represented at the conference. During the course of the program, the presenters discussed numerous topics, including the personal qualities needed for effective mediation, avoiding impasse by effectively framing the mediation before it starts, the use of elicitive communication skills and tools to discuss legal risk, approaches to conflict and lessons learned from neuroscience and the behavioral sciences, techniques for breaking impasse and closing the deal, the stages of the mediation process, and ethical issues in mediation. On each day, in addition to lectures by the presenters on the various topics, demonstrations and role plays were utilized to enhance the participants' learning of each subject area covered in the program. The participants from all of the jurisdictions were enthusiastic and actively engaged throughout the seminar, asking numerous questions and providing keen insights based on their own experiences. With each role play, the participants' understanding of key concepts and their confidence in their ability to function as effective mediators increased significantly. We closed the program by asking each participant to describe the "takeaways" from the program each of them would bring back to their jurisdictions and were delighted to hear how much they enjoyed and benefited from the seminar.

Ms. Bernard, Mr. Herman and I had the opportunity to get to know all of the participants and each of us learned much from them, not only about ADR practices in their jurisdictions but also about the cultural background in which their courts operate. Our hosts showed us exceptionally warm hospitality throughout the program, including a lovely closing banquet in a beautiful setting by the sea. I wish to express my gratitude to the Honorable Philip Carbullido, associate justice of the Supreme Court of Guam and chair of the Pacific Judicial Council Education Committee, as well as Josephine "Popping" Cepeda, chamber administrator for Justice Carbullido, and her staff for their outstanding

assistance in the planning process and during the program itself. I also wish to thank Magistrate Judge and Clerk of Court Heather Kennedy of the United States District Court for the Northern Marianas Islands and Chief Deputy Clerk William Bezzant for their splendid hospitality, including showing us the scenic beauty of Saipan as well as the numerous historic World War II sites on the island. Finally, I wish to thank my co-presenters, Claudia Bernard and Howard Herman, with whom it was a great pleasure and privilege to present the program. 

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Office of the Circuit Executive

Elizabeth A. Smith, Circuit Executive
P.O. Box 193939, San Francisco, CA 94119-3939
Ph: (415) 355-8900, Fax: (415) 355-8901
<http://www.ca9.uscourts.gov>

Pacific Islands Committee Newsletter Staff:

David Madden, *Managing Editor, Asst. Circuit Executive, Public Information*
Russ Mathieson, *Education Specialist, Office of the Circuit Executive*
Katherine Rodriguez, *Communications Asst., Public Information*
Alex Clausen, *Audio Visual Specialist, Public Information*