



JUDICIARY OF GUAM

Administrative Office of the Courts
Guam Judicial Center • 120 West O'Brien Drive • Hagåtña, Guam 96910
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F. PHILIP CARBULLIDO
Chief Justice

ALBERTO C. LAMORENA III
Presiding Judge

PERRY C. TAITANO
Administrator of the Courts

April 29, 2004

MEMORANDUM

TO: Court Management Team & All Supervisors:
Director, Policy Planning & Community Relations; Deputy Administrative Director; Acting Marshal of the Courts; Human Resources Administrator; Acting Clerk of Court, Superior Court; Clerk of Court, Supreme Court; Controller, Financial Management; Chief Probation Officer; Client Services & Family Counseling Administrator; Special Projects Coordinator; Superior Court Staff Attorney; MIS Administrator

FROM: Administrator of the Courts

SUBJECT: 60 Day Requirement on Adverse Actions
Ref: Title4 GCA, §4406

This is to formally advise management officials and supervisors that effective immediately the mandated provisions of §4406 of Title 4 GCA shall be applicable to the Judiciary.

"§4406. Adverse Action Procedures and Appeals. An employee in the classified service who is dismissed, demoted, or suspended shall be given immediate notice of the action, together with a specific statement of the charges upon which such action is based in the manner required by Article 2 of this Chapter, Copies thereof shall be filed with the Civil Service Commission and, if applicable, with the government entity charged with hearing his appeal under the personnel rules governing his appointment not later than the working day next following the effective date of the action. In no event may an employee in the classified service be given the notice and statement of the charges required by this section after the sixtieth (60) day after management knew or should have known the facts or events which form the alleged basis for such action. Any action brought by management in violation of this Section is barred and any decision based on such action is void."

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Memo to Court Management & Supervisors
April 29, 2004

I have directed the Human Resources Division to conduct a two-hour in-house training relative to this "60 day" statute and other procedures on disciplinary actions within the next two weeks. Should you need immediate guidance on this matter, please contact Ms. Barbara Jean Perez, Human Resources Administrator, extension 157 or Ms. Barbara Aguon, Senior HR Management Officer at extension 239.

Be guided accordingly.


PERRY & TATANO

cc: All Judges & Justices
Human Resources Administrator
Supreme Court Staff Attorney

**JUDICIAL COUNCIL RESOLUTION NO. 04-016
RELATIVE TO AMENDING THE JUDICIARY
OF GUAM PERSONNEL RULES AND REGULATIONS**

WHEREAS, the Judiciary of Guam Personnel Rules and Regulations adopted in 1984 do not contain a provision regarding the sixty-day time limit to serve an adverse action as set forth in Title 4 GCA § 4406;

WHEREAS, the Administrator of the Courts requested the Supreme Court Staff Attorney to research the issue of whether the sixty-day rule is applicable to the Judiciary of Guam;

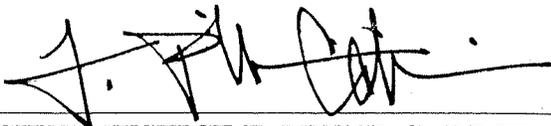
WHEREAS, the Supreme Court Staff Attorney determined in a legal opinion dated April 12, 2004, a copy of which is attached hereto as Exhibit "A", that the sixty-day rule is applicable to the Judiciary of Guam; and

WHEREAS, the Judicial Council agrees with the findings of the Staff Attorney's legal opinion;

NOW, THEREFORE BE IT RESOLVED, that the Judicial Council of Guam hereby adopts the following amendment to the Judiciary of Guam Personnel Rules and Regulations:

Rule 11.11. An employee must be given the final notice and statement of the charges no later than sixty (60) days after management knew, or should have known the facts or events which form the alleged basis for the adverse action. "Management" is defined as an employee's performance rating supervisor or other official who has been assigned supervisory responsibilities over the employee who is in a position to activate or cause the activation of an investigation to determine whether adverse action should be taken or recommended.

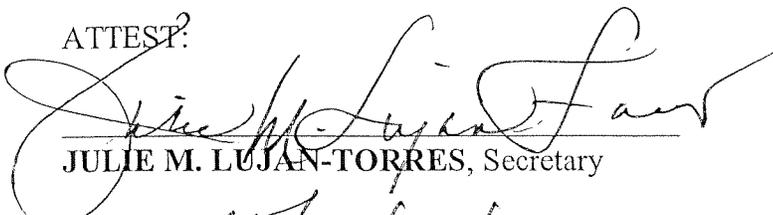
DULY ADOPTED this 16th day of September, 2004 at a duly noticed meeting of the Judicial Council of Guam.



CHIEF JUSTICE F. PHILIP CARBULLIDO,
Chairman

Date: 10/6/04

ATTEST:



JULIE M. LUJAN-TORRES, Secretary

Date: 10/6/04

"Management"

In the case of *Strattard v. GPD*, CY97-AA04, the Civil Service Commission faced the issue of whether the term "management" as used in the 60-day rule referred solely to the appointing authority. The CSC found that the 60-day rule encompassed a broad definition of "management."

Management was therein defined as "Officials with supervisory responsibilities who are in a position to activate or cause the activation of the fact-finding process to secure the facts upon which a decision on whether to take or recommend adverse action against an employee or subordinate may be based."

The problems with defining "management" as "appointing authority" is the potential to obviate the purpose behind the 60-day rule, which is fairness to the employee. If the appointing authority is "management" it can wait indefinitely before taking action by instructing supervisors not to tell the director about the incident until a recommendation is ready.