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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

<p>RE:</p> <p>AMENDMENTS TO MISCELLANEOUS RULE 3.1 OF THE LOCAL RULES OF THE SUPERIOR COURT OF GUAM</p>	<p>) Supreme Court Case No.: PRM06-004</p> <p>)</p> <p>) PROMULGATION ORDER</p> <p>) NO. 06-004-03</p> <p>)</p> <p>)</p> <p>)</p>
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The Subcommittee on Video Conferencing has been working to update the rules for the use of video conferencing technology in certain court proceedings. The Committee's recent work involved proposing amendments to Miscellaneous Rule ("MR") 3.1 of the Local Rules of the Superior Court of Guam in order to expand the use of video conferencing technology in certain criminal and juvenile proceedings. The committee also proposed amendments to Attachment A, the Standard Operating Procedures; and Attachment B, the Flowchart, to depict the current standard operating procedures for video conferencing in court proceedings.

The proposed revisions to MR 3.1 and Attachments A and B were circulated to the Guam Bar Association for comment. The public comment period having expired, the Subcommittee now recommends that the Supreme Court promulgate the proposed revisions to MR 3.1 and Attachments A and B. In addition to the proposed amendments to MR 3.1 and Attachments A and B, the Superior Court Clerk of Court also recommends amending Attachment C, the Order of Conditional Release and Appearance Bond Form. Under the current form, the language for no contact and stay away conditions does not include contact by using electronic devices or email. The Clerk of Court has confirmed that since the adoption of Attachment C to MR 3.1, the

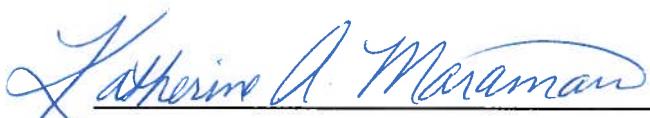
1 Superior Court Judges have included additional language ordering defendants to refrain from
2 contacting the victim or any specified witnesses by email, text, or any electronic device.

3 Upon the recommendation of the Subcommittee and the Clerk of Court, and under the
4 authority to "make and promulgate rules governing the administration of the judiciary and the
5 practice and procedure in the courts of the judicial branch of Guam," 48 U.S.C. § 1424-1(a)(6),
6 the Supreme Court hereby adopts the proposed revisions to MR 3.1 and its related attachments
7 which are attached as Exhibit A. MR 3.1 and its related attachments shall be effective on
8 Tuesday, March 2, 2015.
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11 **SO ORDERED**, this 27th day of February, 2015.

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14 **F. PHILIP CARBULLIDO**
15 Associate Justice

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14 **KATHERINE A. MARAMAN**
15 Associate Justice

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18 **ROBERT J. TORRES**
19 Chief Justice

Video Conferencing

MR 3.1. Video Conferencing.

A. Video Conferencing in Certain Adult Criminal Proceedings.

(1) The trial court may, except as provided in section (3), use video conferencing technology in the following proceedings:

- (a) First appearances as defined by 8 GCA § 45.30;
- (b) Arraignments as defined by 8 GCA § 60.10;
- (c) Bail determination hearings as defined by 8 GCA §§ 40.10, .50;
- (d) Pretrial conferences as defined by 8 GCA § 80.10;
- (e) Criminal trial settings; and
- (f) Other pretrial motion hearings as defined by 8 GCA § 65.20.

(2) A record of any proceeding conducted by video conference shall be made in the same manner as all such similar proceedings not conducted by video conference. However, the court may, upon its own motion or motion of a party, record a proceeding with an audio visual recording system.

The courtroom shall be accessible to the public to the same extent as such proceedings would be if not conducted by video conference.

(3) The trial court may order the personal appearance of a defendant in court for a proceeding governed by section (1) upon a finding of good cause.

B. Video Conferencing in Certain Juvenile Proceedings.

(1) The Family Court may, except as provided in section (3), use video conferencing technology in the following proceedings:

- (a) Preliminary hearings pursuant to Guam Fam. Ct. R. 23;
- (b) Answers as defined by Guam Fam. Ct. R. 10; and
- (c) Other prehearing motions.

(2) A record of any proceeding conducted by video conference shall be made in the same manner as all such similar proceedings not conducted by video conference. However, the court may, upon its own motion or motion of a party, record a proceeding with an audio visual recording system.

Pursuant to 19 GCA § 5112(a), the general public shall be excluded from hearings. The Family Court, however, may admit persons it finds have a direct interest in the case or in the work of the court into the courtroom.

(3) The Family Court may order the personal appearance of a juvenile in court for a proceeding governed by section (1) upon a finding of good cause.

C. Video Conferencing Standards.

(1) All participants must be able to see, hear and communicate with each other simultaneously.

(2) All participants must be able to see, hear and otherwise observe any physical evidence or exhibits presented during the proceeding either by video, PDF, facsimile, or other method.

(3) Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications.

(4) Each location must provide parties with a means of communicating fully and confidentially with counsel.

(5) In interpreted proceedings, the court may order that the interpreter be available to interpret when necessary subject to Guam Super. Ct. R. MR 1.1.4.

(6) Equipment for the immediate transmission of documents or papers, including but not limited to facsimile equipment and computers, must be made available.

D. Standard Operating Procedures.

The Subcommittee on the Proposed Rules and Procedures for Video Conferencing shall develop a set of Standard Operating Procedures necessary to implement the use of video conferencing technology in proceedings authorized by this rule. The Subcommittee, or other authorized body, may update and amend the Standard Operating Procedures as may be required.

ATTACHMENT "A"
STANDARD OPERATING PROCEDURES FOR
VIDEO CONFERENCING IN MAGISTRATE HEARINGS

The use of videoconferencing in magistrate hearings will be governed by MR 3.1 of the Local Rules of the Superior Court of Guam.

Pre-Hearing Procedures

- The Attorney General's office ("AG") will submit a Confirmation Listing to the Clerk's office and the Department of Corrections Hagåtña Detention Facility (DOC) which provides the names of the detainees who will appear before the court.
- The AG will file six (6) copies of each complaint with the Intake Clerk. If there is more than one defendant, the AG will provide two (2) additional copies per defendant.
- The Intake Clerk will stamp file original complaints and copies, and assign a case number. *See Attachment B.*
- The Intake Clerk will forward the file to the Clerk.
- The Clerk will number each magistrate complaint on the bottom left hand corner in the order to be heard.
- The Clerk will fax one (1) copy of each complaint to DOC.
- Marshal will notify DOC at least thirty minutes prior to judge taking the bench.
- DOC will provide a copy of the complaint to each detainee prior to the magistrate hearing.

Post-Hearing Procedures

- Judge orders that the detainee be released from confinement.
- Judge will sign Order of Conditional Release and Appearance Bond (OCR).
- Clerk will make four (4) copies of signed OCR.
- Clerk will prepare and process OCR. *See Attachment B.*
- Marshal will bring the original and copies of OCR to DOC for the detainee to initial that he or she understands the conditions of his or her release.
- Marshal will return original OCR and three (3) copies to Clerk.
- Judge orders that the detainee remain in custody.
- Judge will sign the Commitment Order.
- Clerk will make one (1) copy of the Commitment Order.
- Clerk will prepare and process Commitment Order. *See Attachment B.*
- Marshal will bring the Commitment Order to DOC.

Interpreted Proceedings

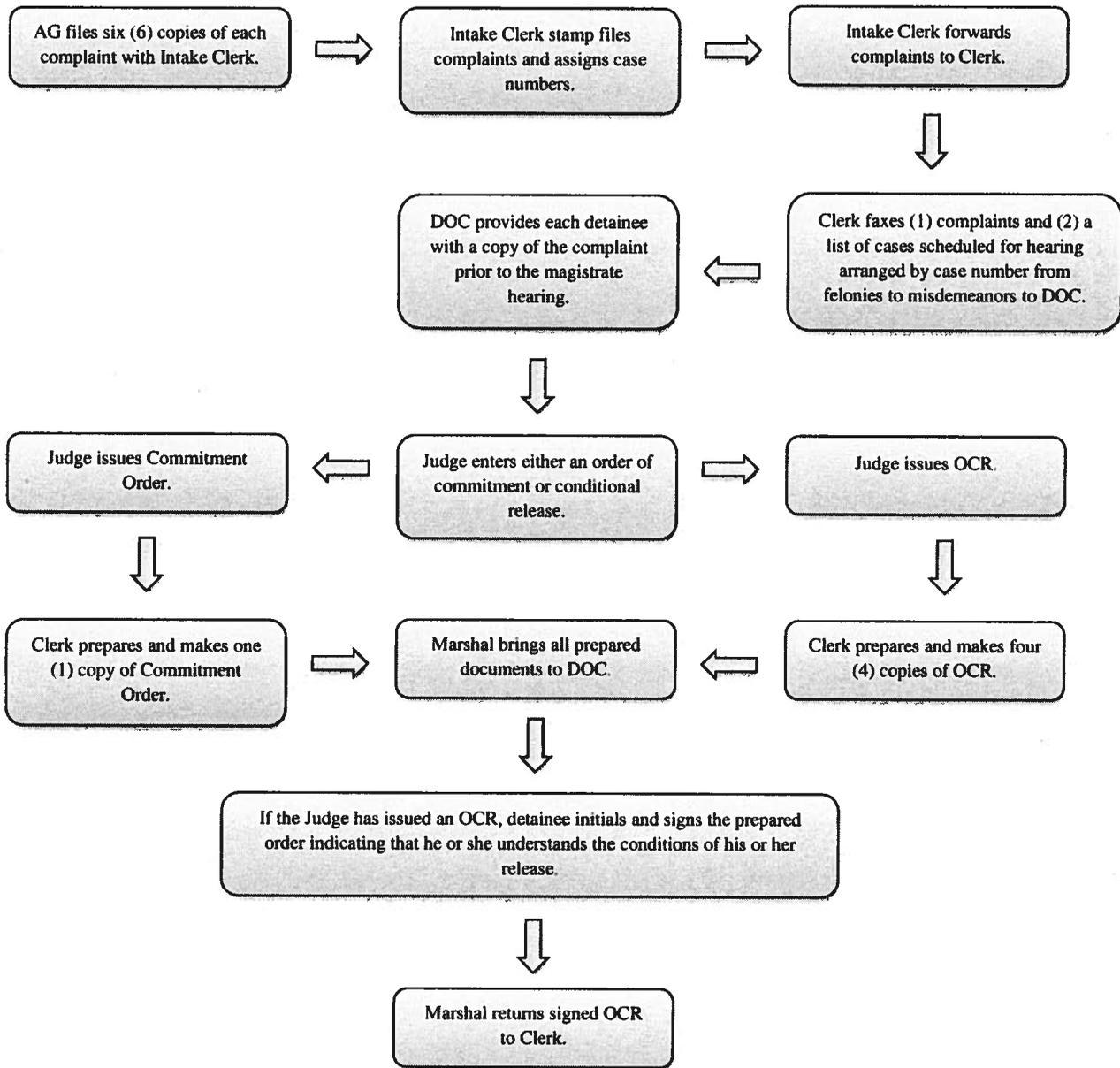
- The court may order that the interpreter be located next to the detainee during the hearing. Generally, however, the interpreter will be located in the courtroom.
- If an interpreter is necessary to explain the conditions of release contained in an OCR, one will be made available to meet with the detainee via videoconferencing after all of the hearings have been concluded. Alternatively, an interpreter will be made available to meet with the detainee at DOC.

Retained Counsel

- If the detainee has retained counsel who wishes to be present during the hearing, counsel has the option of appearing in either the courtroom or at DOC.

ATTACHMENT "B"

FLOWCHART



CONTACT NUMBERS:

CONTACT

Magistrate Judge Tolentino
 Hagåtña Detention Facility
 Mangilao Detention Facility (Female)
 Mangilao Detention Facility (High Risk Males)

TELEPHONE

300-7089
 475-0180
 734-4035 / 734-3981
 734-3981

ATTACHMENT "C"

IN THE SUPERIOR COURT OF GUAM

THE PEOPLE OF GUAM,)
Plaintiff,)
vs.)
Defendant(s).)

CRIMINAL CASE NO. _____

ORDER OF CONDITIONAL RELEASE AND APPEARANCE BOND

IT IS HEREBY ORDERED that Defendant is released from custody under the following conditions:

- 1. BAIL: \$ _____ Cash/Secured - Unsecured/Personal Recognizance (PR) Bond must be posted before Defendant is released, which amount shall be forfeited if Defendant fails to make any court appearance or violates any of the terms of this Release Order.
2. APPEARANCE: Defendant is ordered to appear next on _____, at _____, and shall appear at all further criminal trial proceedings.
3. NO CONTACT/STAY AWAY: Defendant is ordered to stay away from, and have no contact with the victim(s), either in person, through a third party, by telephone or letter, email, text or any electronic devices, including any specified witness or witnesses, _____ Defendant shall stay away from the victim(s), his/her/their residence, dwelling, place of employment, school, day care center, establishment, or any family or social function. Upon becoming aware of the victims' presence, or planned presence, Defendant is ordered to immediately leave the function, or establishment.
4. NO THREATS/ASSAULT/HARASSMENT: Defendant is restrained from threatening to commit or committing acts of family violence against, or from harassing, annoying, or molesting the victim(s), or other family or household members, or any person named in the complaint or indictment or in this order.
5. THIRD PARTY CUSTODIAN: (1) _____ (2) _____ is/are appointed Third Party Custodian(s), whose residence is _____ and having agreed to supervise the defendant in accordance with the conditions contained herein; to use every effort to assure the appearance of the defendant at all scheduled hearings before the Court, and to notify the Court immediately in the event the defendant violates any condition of his/her release or disappears. Defendant shall reside with Third Party Custodian(s) and must be accompanied by the Third Party Custodian(s) at all times. Signature (1) _____ (2) _____
6. HOUSE ARREST: Defendant is under house arrest and may not leave the above residence except for court appearances, to meet with defense counsel or the Probation Officer, to attend religious services, for emergency medical treatment, employment, or _____
7. CURFEW: Defendant shall obey the following curfew: _____
8. FIREARMS: Defendant shall not possess any firearms, or other deadly weapons. Any and all firearms or weapons, including identification card(s), must be removed from the Defendant's residence and surrendered to the Probation Office. Probation or the Police are authorized to search Defendant's person, residence, or vehicle for firearms/weapons.
9. ALCOHOL/DRUGS: Defendant shall not possess, use, and/or consume any alcoholic beverages and/or illegal controlled substances. Defendant shall submit to random/weekly alcohol and/or drug testing at the request of the Probation Office. Failure to submit to such testing will be considered a violation. Probation or the Police authorized to search Defendant's residence, vehicle, or person for alcoholic beverages and/or illegal controlled substances. Defendant shall not enter any alcohol establishment.

- 10. **CO-DEFENDANTS/FELONS:** Defendant shall have no contact with co-defendant(s) either in person, by telephone, by letter, email, text or any electronic devices, through a third party, or any other method. Defendant shall not associate with any known felons.
- 11. **REPORTING:** Defendant shall report to the Probation Office in person, by telephone: Weekly; Monthly.
- 12. **TRAVEL:** Defendant must turn in his/her passport to the Probation Office. Defendant cannot leave Guam without permission of this Court.
- 13. **OTHER REQUIREMENTS:** _____
- 14. **DEFENDANT SHALL OBEY ALL FEDERAL AND LOCAL LAWS, AND ABIDE BY ALL REASONABLE TERMS SET OUT BY PROBATION. DEFENDANT SHALL REPORT TO PROBATION OFFICE IN PERSON BEFORE 4:00PM ON THE NEXT WORKDAY FOLLOWING THEIR RELEASE FROM CUSTODY.**

TO ALL PEACE OFFICERS: This Order shall be enforced by all peace officers.

SO ORDERED: _____

 JUDGE, SUPERIOR COURT OF GUAM

All conditions imposed by this Order are effective immediately. These conditions shall remain in effect until the Defendant is either sentenced, acquitted, or the charge is dismissed. Defendant shall acknowledge that he has read, understands, and has signed the conditions specifically ordered. **Any violation of paragraphs 3, 4, and 8 shall constitute a misdemeanor punishable by imprisonment of up to one (1) year or a fine of \$1,000.00, or both. 9 GCA § 30.40 (2005).** Violation of this order, may subject Defendant to federal charges and punishment. 18 U.S.C.A. §§ 2261(a)-(b), 2261A, 2262(a)-(b). This Order is enforceable in all 50 States, the District of Columbia, Tribal Lands, and U.S. Territories. 18 U.S.C.A. § 2265. It is unlawful for any person subject to an order for protection or convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. 18 U.S.C.A. § 922.

<p>I understand the methods and conditions of my release which have been checked above, the penalties and forfeitures applicable in the event I violate any condition of fail to appear as required. I agree to comply fully with each of the obligations imposed on my release and to notify the Court promptly in the event I change the address indicated below. I have received a copy of this order and I understand that a violation of this order is a Contempt of Court and shall cause me to be arrested and be subject to possible further criminal charges and/or revocation of my pre-trial release.</p>	
Defendant's Name:	_____
Residential Address:	_____
City, State, and Zip Code:	_____
Telephone No.:	_____
_____	_____
DATE	SIGNATURE OF DEFENDANT

Hagåtña, Guam)

Subscribed and sworn and sworn to before me this _____ day of _____, 20____.

 Deputy Clerk / Deputy Marshal