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SUPREME COURT  
OF GUAM

IN THE SUPREME COURT OF GUAM

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|-------------------------------------|---|----------------------------------|
| <b>RE:</b>                          | ) | Supreme Court Case No. PRM06-006 |
|                                     | ) |                                  |
| <b>ADOPTION OF RULE 1.2, "POST-</b> | ) |                                  |
| <b>JUDGMENT APPEARANCE AND</b>      | ) | <b>PROMULGATION ORDER</b>        |
| <b>VIOLATIONS," RULE 1.3,</b>       | ) | <b>NO. 06-006-09</b>             |
| <b>"CALENDARING BY JUDGES," AND</b> | ) |                                  |
| <b>RULE 1.4, "COLLECTION COURT-</b> | ) |                                  |
| <b>PILOT PROGRAM" OF THE LOCAL</b>  | ) |                                  |
| <b>RULES OF THE SUPERIOR COURT.</b> | ) |                                  |

After consultation with the trial court, Prosecution Division of the Office of the Attorney General and with representatives of the Public Defender Services Corporation, this Court has found it to be in the best interests of justice to promulgate new Rules setting forth the procedures for handling post-conviction probation compliance hearings, and at the same time to consider a "Collection Court" - Pilot Program. Specifically, in order to be able to continue to collect fines and restitution ordered as a part of a criminal defendant's sentence, 9 GCA § 80.56(c) allows the Superior Court to use means available for collecting civil judgments. Title 9 GCA § 80.56(c) provides:

(c) Upon any default in the payment of a fine or restitution or any installment thereof, execution may be levied and such other measures may be taken for the collection of the fine or restitution or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the offender in an action on a debt. The levy of execution for the collection of a fine or restitution shall not discharge an offender committed to imprisonment for non-payment until the amount of the fine or restitution has actually been collected.

Under the authority of 9 GCA § 80.56(c), therefore, proposed Rules 1.2, 1.3 and 1.4 were drafted to increase judicial efficiency in post-judgment proceedings, i.e., lessen court time spent in monitoring

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1 post-sentence compliance, and to increase efficiency in collection of fines and restitution which have  
2 been ordered as part of a criminal defendant's sentence by dedicating a court docket to only collections  
3 of such funds.

4  
5 New proposed Rules 1.2, 1.3 and 1.4 of the Local Rules of the Superior Court of Guam were  
6 circulated to members of the Bar on February 3, 2010. Notice of a hearing on the Proposed Rules was  
7 circulated via the Guam Bar Association website on that day. Comment was solicited from all members  
8 of the bench and bar.

9  
10 Comments were received and considered. As a result, proposed Rules 1.2, 1.3 and 1.4 were  
11 submitted to the Supreme Court of Guam for hearing on their Promulgation on February 15, 2010. At  
12 the hearing on February 15, 2010, comments were made on the record and considered. After  
13 consideration of those comments, the following Rules 1.2, 1.3 and 1.4 of the Local Rules of the Superior  
14 Court Miscellaneous Rules are hereby adopted:

15  
16 **MR 1.2: Post Judgment Appearance and Violations.**

17 (A) When an indigent defendant has been placed on probation as provided for in 9  
18 G.C.A. § 80.64, and a judgment of conviction, or an order on deferred plea has been docketed by  
19 the Clerk of Court, or defendant is released pursuant to a suspended sentence, right to indigent  
20 counsel and representation shall automatically terminate on entry of the judgment (including the  
amount of restitution, if any), and counsel shall not be required to appear at post judgment  
hearings, unless a summons or warrant is noticed as provided for herein.

21 (B) During the period of defendant's probation, if the Probation Division of the Superior  
22 Court determines that it appears a defendant has violated a condition of his probation, release or  
23 suspended sentence, the Violation Report, including a Declaration of the probation officer  
24 describing the nature of the alleged violation, and the facts in support of the probable cause  
25 determination of the alleged violation, shall be filed with the Court. Probation may submit a  
proposed warrant directly to the Court with the Report and Declaration in extreme  
circumstances. A copy of the Violation Report, together with a proposed unsigned Summons on  
Violation, shall be served on the Attorney General's Office Prosecution Division.

26 (C) The Prosecution Division of the Attorney General's Office will decide on the basis  
27 of the filed report whether there are grounds to proceed to revoke conditions of probation or  
28 release, and/or recommend immediate imposition of defendant's suspended sentence. If the  
Attorney General declines to act on the Report of Violation, no hearing will be set unless  
otherwise ordered by the court under 9 GCA § 80.66(a)(1).

1 (D) If the Attorney General elects to proceed on the Report of Violation, the Attorney  
2 General shall submit the Summons on Violation to the court indicating that the Attorney General  
3 wishes to proceed with a violation hearing. On the submission of the unsigned Summons on  
4 Violation, the Court shall set the matter for a violation hearing pursuant to 9 G.C.A § 80.66 for  
5 the appearance of the defendant at hearing. The filing of the Summons or Warrant tolls the  
6 period of probation (9 G.C.A. § 80.66). Copies of the Summons or Warrant shall be served on  
7 prior counsel of record.

8 (E) If counsel for an indigent defendant has been relieved as counsel pursuant to the  
9 provisions of Rule 1.2(A), then if the court issues a summons or warrant, indigent counsel shall  
10 be re-appointed to represent the defendant for purposes of assistance at the violation hearing.  
11 Appointment shall cease upon resolution of the violation unless otherwise ordered.

### 12 **MR 1.3 Calendaring by Judges.**

13 Superior Court Judges are encouraged to arrange their criminal calendars with the  
14 following principle in mind: Judges are asked to designate particular days on which different  
15 criminal proceedings will be called. For example, arraignments, trial settings, guilty pleas,  
16 violation hearings, and discovery motions can all be scheduled for different days.

### 17 **MR 1.4 Collection Court – Pilot Program**

18 In an effort to minimize the time and judicial resources dedicated to post-judgment fine  
19 and restitution issues in criminal cases, the following Post-Judgment Collection Court Procedure  
20 pursuant to 9 GCA § 80.56 shall be implemented for one year as a pilot program:

21 (A) Opening of Collection Court Case: Pursuant to 9 GCA §80.56(c), when a  
22 criminal defendant’s probation expires, the unpaid balance of any fine or restitution shall  
23 give rise to a related criminal-collections case to be opened by the Clerk of Court. A case  
24 removing unpaid fines or restitution from the underlying criminal case to an ancillary  
25 criminal-collections case shall be given a new enumeration by the Clerk of Court in the  
26 manner of: “RS 0\_\_-\_\_\_\_\_.” This will indicate that it is a criminal case with unresolved  
27 fine or restitution issues that has been converted to an uncollected criminal-collections  
28 case. The Clerk of Court is authorized to open this new ancillary case without filing fees.  
The Clerk of Court shall open such case at any time that he is notified either by the Judge  
or by a representative of the Probation Services Division that a fine or restitution remains  
unpaid and the case is within 90 days of expiration of probation. Such notification shall be  
provided in the form attached to this Rule as “Form 1: Notification of Conversion of case  
to Collection Court Docket under 9 GCA §80.56.” Within 90 days of receipt of  
“Notification of Conversion to Collection Court” and before the expiration of defendant’s  
probation, the judge shall direct defendant to attend Criminal-Collection Court in an order  
which the defendant is ordered to pay a certain dollar amount toward the total fines,  
restitution or costs each month. The due date shall be set for the first of each month. The  
Criminal-Collection-Court Order will include a list of court dates the defendant must  
appear for if the defendant’s payments become delinquent. The Order shall also contain  
guidelines within to which the defendant must adhere. The defendant must read and  
acknowledge receipt of the Order in writing before leaving the courtroom. The Order may  
be in the form of a Stipulated Order and Judgment.

1 (B) Assignment to Magistrate Judge and Representation of Parties: All cases opened  
2 under this new docket known as the "RS Docket" shall be assigned to the Superior Court of  
3 Guam Magistrate pursuant to 7 GCA §4401(c)(4), authorizing a Superior Court Magistrate to  
4 hear "post judgment civil matters relating to the execution of judgment . . .". Cases in the "RS  
5 Docket" shall be calendared by the Clerk of Court on the calendar of the Magistrate Judge, who  
6 may schedule them at any time deemed suitable by the Magistrate or his staff.

7 (C) Procedure of Collection Court:

8 (1) If a defendant is delinquent, the defendant must appear for court to explain to the  
9 Magistrate why he or she is unable to make the payments in a timely manner. The Assistant  
10 Attorney General may discuss the case with the defendant, and try to work out a better plan. The  
11 Magistrate may consider options to avoid the defendant's further delinquency but nonetheless  
12 shall order the defendant to meet his or her obligation.

13 (2) If the defendant does not appear in court, the Magistrate will either reset to the next  
14 Collection Court date or issue a summons or a recommendation for a warrant of arrest under  
15 Administrative Rule 10-001 and assess court costs or fees accordingly. When a warrant of arrest  
16 is issued, the court shall set cash bail in an amount equal to the balance due or \$250.00,  
17 whichever is less.

18 Therefore, pursuant to the authority to "make and promulgate rules governing the administration  
19 of the judiciary and the practice and procedure in the courts of the judicial branch of Guam," 48 U.S.C.  
20 § 1424-1(a)(6), the Supreme Court hereby enacts Miscellaneous Rules 1.2, 1.3 and 1.4 of the Rules of  
21 Court for the Superior Court of Guam.

22 The Rule, as amended and restated, shall apply to all actions starting on April 15, 2010.

23 SO ORDERED, this 19<sup>th</sup> day of March, 2010.

24 **Original Signed: F. Philip Carbullido**  
25 **By**  
26 **F. PHILIP CARBULLIDO**  
27 Associate Justice

28 **Original Signed: Katherine A. Maraman**  
**By**  
**KATHERINE A. MARAMAN**  
Associate Justice

**Original Signed: Robert J. Torres**  
**By**  
**ROBERT J. TORRES**  
Chief Justice

1 FORM MR 1.4(A)-1

2 NOTICE OF CONVERSION OF CASE TO COLLECTION COURT DOCKET

3 under 9 GCA 80.56

4  
5 To: Clerk of the Superior Court of Guam

6 Re: Referral of Criminal Fine/Restitution to Collection Court Docket

7 Date: [To be submitted within 90 days prior to expiration of probation]

8  
9 **YOU ARE HEREBY NOTIFIED** pursuant to Miscellaneous Rule 1.4(A) of the Rules of  
10 Practice for the Superior Court of Guam, that the above referenced criminal case

11 1. Has outstanding fines unpaid in the amount of \$\_\_\_\_\_.

12 2. Has outstanding restitution unpaid in the amount of \$\_\_\_\_\_.

13 3. All other conditions of release or probation have been satisfied or are no longer at issue.  
14 Counsel for indigent defendant has been relieved of his/her appointment as counsel.

15 4. The term of probation will expire on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

16  
17 **YOU ARE THEREFORE DIRECTED** to transfer this case to an ancillary criminal collections  
18 case with a new caption which shall be "RS 0\_\_ - \_\_\_\_\_," indicating that it is a criminal case with an  
19 unresolved fine or restitution issue.  
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22 Submitted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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26 \_\_\_\_\_  
27 ( ) Probation Officer (or)

28 ( ) JUDGE OF THE SUPERIOR COURT

