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**IN THE SUPREME COURT OF GUAM**

SUPREME COURT  
GUAM

**RE: ) PROMULGATION ORDER NO.: 06-003**  
          )  
**ADOPTION OF THE RULES OF )**  
**COURT FOR THE SUPERIOR COURT )**  
**OF GUAM ORDERS OF PROTECTION )**  
**FAMILY VIOLENCE )**

In 2003, the Subcommittee on Judicial, Attorney, and Community Education (“Subcommittee”) was formed by the Unified Judiciary Committee (now Judicial Council of Guam) for the purpose of education of justices, judges, attorneys and the community at large. The Subcommittee is comprised of co-chairs Associate Justice Frances M. Tydingco-Gatewood, Judge Elizabeth Barrett-Anderson, Judge Anita A. Sukola and members Attorneys Joaquin C. Arriola, Jr., Carol T. Butler, Geraldine A. Cepeda, Richard S. Dirkx, Cynthia V. Ecube, William D. Pesch, Ross E. Putnam, Carol M. Hinkle-Sanchez, Seaton M. Woodley, III and Court Archivist Lorrie Anderson.

In conjunction with the Family Violence and Sexual Assault Task Force, the members of the Subcommittee drafted the Rules of Court for the Superior Court relative to Family Violence Orders of Protection (“the Rules”). An Order of Protection is recognized as a powerful tool to reduce violence within a household, and it is provided for by the Guam Family Violence Act, which was first enacted on December 30, 1994 pursuant to Guam Public Law 22-160, and was further amended in 1998 by Guam Public Law 24-239. When properly drafted, an Order of Protection can be effectively enforced locally and throughout the nation. These Rules are intended to instill uniformity and consistency in the process of obtaining Orders of Protection in cases involving Family Violence, to provide guidance for the judges, the attorneys and the parties, and to ensure effective enforcement of these orders.

The Chairpersons and members of the Subcommittee, who have extensive experience in domestic violence cases, have drafted and reviewed the Rules, which were then sent to the judges

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1 of the Superior Court and membership of the Guam Bar Association for comment.

2 On March 21, 2006, the Subcommittee submitted its report to the Supreme Court  
3 recommending adoption of the Rules of Court for the Superior Court relative to Family Violence  
4 Orders of Protection. On March 27, 2006, the matter of the adoption of the Domestic Violence  
5 Rules came before the Supreme Court for hearing.

6 Upon the recommendation of the Subcommittee, and under the supervisory authority over  
7 the Superior Court and the authority to promulgate rules of practice and procedure in the courts of  
8 the judicial branch of Guam pursuant to the Organic Act of Guam at 48 U.S.C. § 1424-1(a)(4) and  
9 (6), the Supreme Court hereby adopts, as Rule 14, the Rules of Court for the Superior Court relative  
10 to Family Violence Orders of Protection as follows:

11 **RULE 14 OF THE SUPERIOR COURT OF GUAM**

12 **RULES RELATIVE TO FAMILY VIOLENCE ORDERS OF PROTECTION.**

13 **RULE 14.1. JURISDICTION.**

14 **Section 1.01. Limitation of Process.** The following Rules shall apply to the Order of Protection  
15 process for all persons as defined under 9 G.C.A §30.10(b), and 7 G.C.A. §40105(d), who seek an  
16 order of the Superior Court for exigent and immediate relief from abuse or the threat of abuse by  
17 a family or household member. This process does not apply to protection cases filed by the  
18 government in cases designated Persons In Need of Services; Beyond Control; and Adult  
19 Protection.

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21 **RULE 14.2. PETITION.**

22 **Section 2.01. Petition for Order of Protection.**

23 (a) A Petition for an Order of Protection shall be filed with the Clerk of Court at the Courts  
24 and Ministerial Division of the Superior Court of Guam.

25 (b) The new designation for a Petition of an Order of Protection shall be "Protective Order -  
26 PO Case #00-0000." Plaintiff shall be the "Petitioner." Defendant shall be the "Respondent."

1 (c) All petitions must be made under oath, and contain detailed facts and information to  
2 assist the Court in making a determination of the basis for the petition.

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4 **Section 2.02. Separate Actions.** Petitions for an Order of Protection may be filed separately, filed  
5 concurrently with another case, or subsequent to another existing case. All cases involving the same  
6 parties shall be automatically consolidated by the Clerk of Court for assignment.

7  
8 **Section 2.03. Costs.** Petitions for an Order of Protection shall be filed without cost. This fee  
9 exemption applies only to these Petitions for Orders of Protection. The fee exemption is not  
10 available for any concurrent or subsequent filing of a related domestic, child custody, or child  
11 support action. Fees must be paid for related domestic, child custody, or child support actions, even  
12 if filed at the same time as the Petition for Order of Protection.

13 Source: 19 G.C.A. §14104

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15 **Section 2.04. Clerk Office Open.** The Clerk's Office shall be open and available to assist any  
16 person seeking an Order of Protection Monday through Friday at the hours of 11:00 a.m., and 4:00  
17 p.m.. If the Court is not open for regular business hours, or on the weekend, a petition may be heard  
18 by the magistrate judge, or any judge available on duty.

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20 **RULE 14.3. HEARINGS and NOTICE.**

21 **Section 3.01. Ex Parte Application for Temporary Order of Protection:**

22 (a) An *ex parte* application for an Order of Protection shall be heard each day pursuant to  
23 these Rules. A Rule 9 declaration of notice is required only in cases where Respondent is  
24 represented by counsel. Notice is not required to be served on a pro se Respondent if such notice  
25 would further endanger the safety and welfare of the Petitioner and/or minor child/ren. The Clerk  
26 of Court will transmit the petition for immediate review and hearing at such times designated by  
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1 the Ex Parte judge, or any available judge should the Ex Parte judge not be available.

2 (b) An *ex parte* application for an Order of Protection and a request for a Show Cause  
3 hearing shall be filed together with a Petition and Affidavit for Temporary Order of Protection  
4 subscribed under oath by the Petitioner.

5 (c) The Judge after review of the Petition and Affidavit may require the Petitioner to  
6 respond to any questions from the Court at the Ex Parte hearing. If the Petitioner is not present at  
7 the Ex Parte hearing and is instead represented by an attorney, the Court may accept the Affidavit  
8 of the Petitioner as establishing grounds for issuance of the Temporary Order of Protection.

9 Source: 19 G.C.A. §14101

10 (d) Upon grant of the Temporary Order of Protection, the Clerk of Court shall set the matter  
11 for a Show Cause Hearing no later than ten (10) days calendar from date of the issuance of the  
12 Temporary Order of Protection by the judge.

13 Sources: 7 G.C.A. §40105(b) and §20301

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15 **Section 3.02. Final Orders of Protection/Show Cause Hearing.**

16 (a) All Petitions for an Order of Protection shall be heard by the Family Violence Court  
17 judge. If the parties have a pending domestic case assigned to a Family Court judge, the Show  
18 Cause hearing should be scheduled before the Family Court judge.

19 (b) All Show Cause hearings shall be heard no later than ten (10) days calendar after  
20 issuance of the Temporary Order of Protection, and shall be calendared before the Family Violence  
21 Court judge at such times as designated by the Court.

22 (c) The Respondent shall be ordered to appear before the Court at the times and dates  
23 specified in the Temporary Order of Protection. Failure to appear may subject the Respondent to  
24 contempt charges. If the Respondent fails to appear at the hearing after being properly served and  
25 noticed, the case may proceed by default.

26 (d) The Court shall inform the Respondent of his right to seek assistance of an attorney at  
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1 his own expense. If the Respondent desires to obtain assistance of an attorney, the Court may  
2 continue the Show Cause hearing for a reasonable period to afford the Respondent an opportunity  
3 to obtain counsel. A Temporary Order of Protection may be modified, may continue as a temporary  
4 order, or may be made permanent as deemed appropriate by the Court.

5 (e) After taking testimony and evidence at the Show Cause hearing, and upon a showing  
6 of proof by a preponderance of the evidence as to the truth of the allegations in the Petition, the  
7 Judge may issue an Order of Protection for such periods as authorized by law, or may approve any  
8 consent agreement to bring about cessation of abuse of the plaintiff or minor child/ren. Upon  
9 motion of the Petitioner and in the sound discretion of the Family Violence Court judge, the Order  
10 for Protection pursuant to Title 7GCA § 40105(b) may be extended for additional periods of one  
11 (1) year.

12 (f) Mutual restraining orders, either stipulated to by the parties or issued by the court,  
13 are prohibited unless:

14 (1) based on a cross or counter petition or complaint, or

15 (2) the court has made specific findings that each party was entitled to  
16 such an order, including detailed findings of fact indicating that both  
17 spouses acted primarily as aggressors and that neither acted primarily in  
18 self defense.

19 Source: 18 USC §2265(c)  
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21 **RULE 14.4. RELIEF.**

22 **Section 4.01. Temporary Order of Protection.** A court may grant the following temporary  
23 relief at the ex parte hearing:

24 (a) Enjoining and restraining the Respondent from harassing, abusing, threatening, using  
25 or attempting to use physical force or cause bodily injury to the Petitioner and the minor  
26 child/ren, or communicating directly or indirectly with the Petitioner or the minor(s);  
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1 (b) Enjoining the Respondent from coming within five hundred (500) feet of the  
2 Petitioner, Petitioner's residence, place of employment, school, or the minor child/ren until  
3 otherwise permitted by the Court;

4 (c) Restraining the Respondent from interfering with the Petitioner's temporary custody  
5 of the minor child/ren, or removing them from Guam;

6 (d) Granting exclusive possession of the family residence to the Petitioner by evicting  
7 the Respondent or restoring possession to the Petitioner when the residence or household is  
8 jointly owned or leased by the parties;

9 (e) Granting the Petitioner use of a vehicle or other personal possession, or ordering  
10 payment of certain costs, fees, rent or mortgage payments, child support, medical and dental  
11 costs, court costs, or attorneys fees;

12 (f) Awarding temporary custody, providing for or prohibiting visitation with the  
13 child/ren;

14 (g) Ordering the temporary or permanent surrender of any kind of weapon, or instrument  
15 that could inflict harm or injury in the possession of the Respondent.

16 Sources: 7 G.C.A §40105; and 19 G.C.A §8404  
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18 **Section 4.02. Order of Protection.** A court may grant the following permanent relief:

19 (a) Enjoining and restraining the Respondent from harassing, abusing, threatening, using  
20 or attempting to use physical force or cause bodily injury to the Petitioner and the minor  
21 child/ren, or communicating directly or indirectly with the Petitioner or the minor(s);

22 (b) Enjoining the Respondent from coming within five hundred (500) feet of the  
23 Petitioner, Petitioner's residence, place of employment, school, or the minor child/ren until  
24 otherwise permitted by the Court;

25 (c) Restraining the Respondent from interfering with the Petitioner's custody of the  
26 minor child/ren, or removing them from Guam;  
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1 (d) Granting exclusive possession of the family residence to the Petitioner by evicting  
2 the Respondent or restoring possession to the Petitioner when the residence or household is  
3 jointly owned or leased by the parties;

4 (e) Granting the Petitioner use of a vehicle or other personal possession, or ordering  
5 payment of certain costs, fees, rent or mortgage payments, child support, medical and dental  
6 costs, court costs, or attorneys fees;

7 (f) Awarding permanent custody, providing for or prohibiting visitation with the  
8 child/ren;

9 (g) Ordering the temporary or permanent surrender of any kind of weapon, or instrument  
10 that could inflict harm or injury in the possession of the Respondent.

11 Sources: 7 G.C.A §40105; 19 G.C.A §8404, and 9 G.C.A §30.32  
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13 **RULE 14.5. SERVICE OF ORDERS.**

14 **Section 5.01. Service of Orders of Protection and Show Cause Orders.** The Marshals Division  
15 of the Superior Court of Guam will serve all Orders of Protection and Show Cause on Orders upon  
16 order of the Court, or at the request of the Petitioner. The Petitioner or his/her attorney should  
17 provide complete and detailed information on the whereabouts of the Respondent(s). If the  
18 Respondent is incarcerated the Petitioner should notify the Marshal of the date of arrest.  
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20 **RULE 14.6. STANDARD OF REVIEW.**

21 **Section 6.01. Burden of Proof.**

22 (a) The burden of proof is upon the Petitioner who seeks an Order of Protection to prove  
23 by a preponderance of the evidence the truth of the allegations stated in the petition.

24 Source: 7 G.C.A. §40104(a)

25 (b) Immediate and present danger to the Petitioner or minor child/ren shall constitute good  
26 cause for the issuance of an Order of Protection.  
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1 Source: 7 G.C.A. §40104(b)

2 (c) The Rules of Evidence do not apply to ex parte hearings for Temporary Orders of  
3 Protection. The Rules of Evidence are applicable to any final hearing on the merits in a petition for  
4 protection from abuse.

5 Source: 7 G.C.A. §40104(a)

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7 **Section 6.02. Additional Evidence Required on Ex Parte Application.**

8 a) A party seeking removal of another party from the family residence under Rule 4.01(d)  
9 on ex parte petition must provide, to the satisfaction of the court, proof of ownership of the family  
10 residence or leasehold.

11 Source: 7 G.C.A. §40105

12 b) A party seeking temporary custody of minor children of the parties under Rule 4.01(f)  
13 on ex parte petition must provided proof, by a preponderance of the evidence, of immediate and  
14 present danger of abuse to the minor children.

15 Source: 7 G.C.A. §40104(b)

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17 **RULE 14.7. CONTEMPT.**

18 **Section 7.01. Civil Contempt.**

19 (a) Upon violation of a protective order, or a court-approved consent agreement of the  
20 parties, the Court may hold the Respondent in contempt, as follows:

21 (1) If the judge certifies that he or she saw or heard conduct constituting contempt  
22 and it was committed in the actual presence of the court, and any person found guilty of  
23 such contempt may be punished summarily by a fine not exceeding \$25.00 or by  
24 imprisonment not exceeding five days or by both. The order of contempt shall recite the  
25 facts and shall be signed by the judge and entered of record.

26 (2) Other than as provided by subsection (a), contempt shall be prosecuted on notice  
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1 and a hearing. Any person found guilty of contempt, other than as provided by subsection  
2 (a), may be subject to the same penalty as a person found guilty of a petty misdemeanor,  
3 which is, a definite term set by the court not to exceed sixty (60) days imprisonment.

4 Sources: 7 G.C.A. §§40109, 34101(a) and (b); 9 G.C.A. § 80.34.

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6 **RULE 14.8. FIREARMS.**

7 **Section 8.01. Surrender of Firearms and/or Ammunition.**

8 (a) The Court shall require a Respondent subject to an Order of Protection to immediately  
9 surrender all firearms and/or ammunition to the Marshal of the Court, or other law enforcement  
10 officers.

11 (b) The Court may issue to the Marshal such search warrants as are necessary to effect the  
12 federal statute, the Gun Control Act of 1996, 18 U.S.C. §922(g)(9). The Court may find probable  
13 cause determination based on the allegations contained in the Petition and Affidavit of the  
14 Petitioner, or evidence presented at hearing.

15 (c) Any firearms and/or ammunition seized by the Marshals shall comply with Standard  
16 Operating Procedures of the Superior Court of Guam Marshal Division for the seizure, storage and  
17 return of all firearms and/or ammunition seized in all protection from abuse cases. Any firearm  
18 seized by any other law enforcement officer shall comply with that department's standard operating  
19 procedure for the seizure, storage and return of all firearms and/or ammunition seized.

20 Source: 18 U.S.C. §922(g)(8), (9).

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22 **Section 8.02. Federal Firearm Prohibition.** An Order for Protection must meet the requirements  
23 to satisfy the requirements of a "Qualifying Protection Order" under the federal firearm  
24 prohibitions:

25 (1) the Respondent must have received notice of the hearing,

26 (2) the Respondent must have had an opportunity to participate in the hearing,  
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1 (3) include a finding that the Respondent represents a credible threat to the physical safety  
2 of the Petitioner or child; or by its terms, explicitly prohibit the actual, attempted, or  
3 threatened use of physical force against the Petitioner or child.

4 Source: 18 USC §922(g)(8)

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6 **Section 8.03. Release of Firearms and/or Ammunition.**

7 (a) Any firearm and/or ammunition that has been surrendered pursuant to Rule 8.01 shall  
8 not be released to a Respondent who is subject to an Order of Protection as set forth in Rule 8.02,  
9 until the Respondent obtains a court order granting such release.

10 (b) The Respondent or other registered owner may request, by motion to the assigned judge,  
11 for the release of any firearm and/or ammunition surrendered pursuant to Rule 8.01. Such motion  
12 shall be made after the expiration of the Order for Protection.

13 (c) At the hearing, the judge shall consider the following:

14 (1) Has the Order for Protection has been extended or made permanent

15 (2) Is the Respondent is subject to any court order that precludes the ownership or  
16 possession of firearms and/or ammunition;

17 (2) The ownership and registration status of the firearm and/or ammunition;

18 (3) Any other factor which, in the sound discretion of the court will justify the  
19 release or other disposition of the firearm(s) or ammunition, including but not limited to,  
20 the grounds for Respondent's request for release, possible danger fo the victim(s), and  
21 employment purposes.

22 (d) No firearm hall be released by any Judiciary marshal pursuant to this rule unless the  
23 Respondent complies with the applicable statutes regarding registration, Chapter 60 of Title 10 of  
24 the GCA.

25 (e) The Judiciary shall not be held liable for alleged damage or deterioration due to the  
26 storage, transportation of any firearm that was surrendered to a marshal pursuant to Rule 8.01.

1 **RULE 14.9. ENFORCEMENT OF ORDERS OF PROTECTION.**

2 **Section 9.01. Orders for Protection.** Orders of Protection issued by the courts of Guam shall be  
3 certified by the Clerk of the Superior Court of Guam, and shall be accorded full faith and credit in  
4 all jurisdictions in the United States, including territories, tribes and commonwealths.

5 **Section 9.02. Foreign Orders for Protection.**

6 (a) A certified copy of an order for protection or restraining order issued in another state or  
7 jurisdiction may be filed with the Clerk of Court of the Superior Court of Guam. The Clerk of  
8 Court shall take the same action upon foreign orders as is taken with orders issued by a court of  
9 Guam.

10 Source: 19 G.C.A. § 14105 (a).

11 (b) Any valid protection order relating to abuse or domestic violence issued in another state,  
12 territory, tribe, or commonwealth of the United States, and filed with the Clerk of Court in  
13 accordance with subsection (a), shall be afforded full faith and credit by the courts of Guam and  
14 enforced as if issued by a court of Guam.

15 Source: 19 G.C.A. § 14105 (b).

16 (c) At the request of a court of another state, or of a person who is affected by or has a  
17 legitimate interest in a foreign order for protection, the Clerk of Court shall certify and forward a  
18 copy of the foreign order to the requesting party at no cost.

19 Source: 19 G.C.A. § 14105 (c)(2).

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21 **RULE 14.10. PROTECTIVE ORDER REGISTRY.**

22 **Section 10.01. Registry.** The Clerk of the Superior Court of Guam shall maintain a registry of all  
23 orders for protection and restraining which are:

24 (1) issued by the courts of Guam. Such order shall be included in the registry within  
25 24 hours after the order is issued.

26 (2) issued by a court in another state, territory, tribe, or commonwealth of the United  
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States, which has been and filed with the Clerk of Court in accordance with Rule 9.02(a).  
Such order shall be included in the registry within 24 hours after a certified copy of the  
foreign order is filed with the Clerk of Court.

Sources: 19 G.C.A. § 14105 (c)(1); 19 G.C.A. § 14106 (a).

**Section 10.02 Availability of Information.** Upon request, the information contained in the  
registry shall be available at all times to a court, law enforcement agency, and other governmental  
agency.

Source: 19 G.C.A. § 14106.

\* \* \*

These rules shall govern the Order of Protection process in the Superior Court, for all  
persons as defined under 9 G.C.A §30.10(b), and 7 G.C.A. §40105(d), who seek an order of the  
Court for exigent and immediate relief from abuse or the threat of abuse by a family or household  
member.

SO ORDERED this 31<sup>st</sup> day of March, 2006.

**Robert J. Torres**

**Frances M. Tydingco-Gatewood**

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**ROBERT J. TORRES**  
Associate Justice

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**FRANCES M. TYDINGCO-GATEWOOD**  
Associate Justice

**F. Philip Carbullido**

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**F. PHILIP CARBULLIDO**  
Chief Justice