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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

RE: **ADOPTION OF THE GUAM RULES OF CIVIL PROCEDURE and LOCAL RULES OF THE SUPERIOR COURT OF GUAM**	Supreme Court Case No. PRM 06-006 **PROMULGATION ORDER NO. 06-006-02**

The Subcommittee on Rules of Civil Procedure and Rules of Court Revisions came before this Court on May 3, 2007, on a motion to promulgate the revised Guam Rules of Civil Procedure and Local Rules of the Superior Court of Guam. The Supreme Court approved the promulgation under Promulgation Order No. 06-006-01 on that date, on the condition that all new rules would take effect on June 1, 2007, subject to the following transitional language:

> The Guam Rules of Civil Procedure and the revised Rules for the Superior Court of Guam, as adopted by the Supreme Court of Guam through this Promulgation Order Number 06-006-02 apply to all actions, cases and proceedings brought after the Rules take effect pursuant to the terms of the Promulgation Order takes effect and to all actions, cases and proceedings commenced prior to the effective date of June 1, 2007, except to the extent that application of the Guam Rules of Civil Procedure or the Rules for the Superior Court of Guam to those pending actions, cases and proceedings would not be feasible, or would work injustice, in which event the prior valid Guam Rule of Civil Procedure or Rule for the Superior Court of Guam shall apply.

After the promulgation hearing on May 3, 2007, the Subcommittee held two subcommittee meetings and on May 22, 2007, the Subcommittee presented a forum to the Guam Bar Association. Finally, on May 25, 2007, subcommittee representatives gave a presentation to all Superior Court of Guam judges and Supreme Court of Guam justices. As a result of these further meetings and forums, minor adjustments in the rules were made by the Subcommittee at its final meeting on May 30, 2007.

Upon the recommendation of the Subcommittee, and under the authority to "make and promulgate rules governing the administration of the judiciary and the practice and procedure in the

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courts of the judicial branch of Guam," 48 U.S.C. § 1424-1(a)(6), the Supreme Court hereby adopts the Guam Rules of Civil Procedure attached hereto as Exhibit A and the Local Rules of the Superior Court of Guam, attached hereto as Exhibit B which shall apply to all actions, cases and proceedings brought after these Rules take effect on June 1, 2007, and to all actions, cases and proceedings commenced prior to the effective date of June 1, 2007, except to the extent that application of the Guam Rules of Civil Procedure or the Local Rules of the Superior Court of Guam to those pending actions, cases and proceedings would not be feasible, or would work injustice, in which event the prior valid Guam Rule of Civil Procedure or Rule of the Superior Court of Guam shall apply.

SO ORDERED, this 31st day of May, 2007.

KATHERINE A. MARAMAN
Justice *Pro Tempore*

ROBERT J. TORRES
Associate Justice

F. PHILIP CARBULLIDO
Chief Justice

GUAM RULES OF CIVIL PROCEDURE

Effective June 1, 2007

Preamble

The revised Guam Rules of Civil Procedure and Local Rules of the Superior Court of Guam were adopted by the Supreme Court of Guam in Promulgation Order No. 06-006-01 on May 3, 2007 pursuant to its authority under 48 U.S.C. § 1424-1(a)(6). After the promulgation hearing on May 3, 2007, further meetings and forums were held and as a result minor adjustments in the rules were made by the Subcommittee. On May 31, 2007 the final and complete Guam Rules of Civil Procedure and Local Rules of the Superior Court of Guam were adopted by the Supreme Court of Guam in Promulgation Order No. 06-006-02 pursuant to its authority under 48 U.S.C. § 1424-1(a)(6). This Promulgation Order repealed the pre-existing Rules of Civil Procedure for the Superior Court of Guam adopted by the Judicial Council of Guam on November 28, 1989 and which went into effect on May 3, 1990 through legislative inaction and also repealed and reenacted the Rules of the Superior Court of Guam as amended.

These Rules as adopted by the Supreme Court of Guam through this Promulgation Order Number 06-006-02 apply to all actions, cases and proceedings brought after the Rules take effect pursuant to the terms of the Promulgation Order and to all actions, cases and proceedings commenced prior to the effective date of June 1, 2007, except to the extent that application of the Guam Rules of Civil Procedure or the Local Rules of the Superior Court of Guam to those pending actions, cases and proceedings would not be feasible, or would work injustice, in which event the prior valid Guam Rule of Civil Procedure or Rule of the Superior Court of Guam shall apply.

The revised Guam Rules of Civil Procedure and Local Rules of the Superior Court of Guam were drafted by the Supreme Court of Guam Subcommittee on Rules of Civil Procedure and Rules of Court Revisions. This Subcommittee was co-chaired by Associate Justice Robert J. Torres, Jr. and Judge Katherine A. Maraman and members included Judge Elizabeth Barrett-Anderson; Judge Arthur R. Barcinas; Joaquin C. Arriola, Esq.; Janalynn C. Damian, Esq.; B. Ann Keith, Esq.; John B. Maher, Esq.; Michael A. Pangelinan, Esq.; Traylor T. Mercer, Esq.; Richard A. Pipes, Esq.; Danielle T. Rosete, Esq.; Charles H. Troutman, III, Esq.; Randall Todd Thompson, Esq.; Elyze J.T. McDonald, Esq.,; Joseph C. Razzano, Esq.; Aaron Jackson, Esq.; and Richard Martinez, Clerk of Court, Superior Court of Guam. The subcommittee reviewed the existing Guam Rules of Civil Procedure and proposed amendments based on the existing Federal Rules of Civil Procedure and the CNMI Rules of Civil Procedure.

GUAM RULES OF CIVIL PROCEDURE

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PART 1
SCOPE OF RULES
ONE FORM OF ACTION

Rule 1. Scope of Rules

These rules govern the procedure in all suits of a civil nature, including civil actions, domestic actions, special proceedings and criminal matters of which the court has jurisdiction. Their application to criminal matters are limited to Rules 78, 79(c), 84, 91 and 93. They shall be construed and administered to secure a just, speedy, and inexpensive determination of every action.

SOURCE: FRCP 1 (2003).

Rule 2. One Form of Action

There shall be one form of action to be known as "civil action." Within the category of 'civil action' there are the following kinds of cases: civil cases, domestic cases, and special proceedings.

SOURCE: FRCP 2 (2003).

PART 2
COMMENCEMENT OF ACTION

Rule 3. Commencement of Action

A civil action is commenced by filing a complaint with the court.

SOURCE: FRCP 3 (2003).

Rule 4. Summons

(a) Form. The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) Service with Complaint; by Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under Rule 4(m) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a marshal, deputy marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed in forma pauperis.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(A) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84 of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside Guam; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within Guam or in any other jurisdiction of the United States, its territories, commonwealths, and possessions fails to comply with a request for waiver made by a plaintiff located within Guam, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside Guam.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Service Upon Individuals Within Guam or other Jurisdictions of the United States.

Unless otherwise provided by law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in Guam or in any other jurisdiction of the United States, its territories, commonwealths, and possessions:

(1) in any manner prescribed or authorized by any law of Guam, or as prescribed by the law of the place where the person is served; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual

place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal or Guam law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(g) Service Upon Infants and Incompetent Persons. Service upon an infant or an incompetent person in Guam or in a jurisdiction of the United States or its territories, commonwealths, and possessions, shall be effected in the manner prescribed by the laws of such jurisdiction in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state. Service upon an infant or an incompetent person in a place not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions shall be effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f)

or by such means as the court may direct.

(h) Service Upon Corporations and Associations. Unless otherwise provided by Guam law, service upon a domestic or foreign corporation (including public corporations organized and existing under the laws of Guam) or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions in any manner prescribed by Guam law, the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant; or

(2) in a place not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions, in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) Serving the Government of Guam Its Agencies, Corporations, Officers, or Employees.

(1) Service upon the government of Guam shall be effected:

(A) by delivering a copy of the summons and of the complaint to the Attorney General or to an assistant attorney general or clerical employee designated by the Attorney General in a writing filed by the clerk of court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the office of the Attorney General; and

(B) in any action attacking the validity of an order of an officer or agency of the government of Guam not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

(2) **(A)** Service on an agency or corporation of the government of Guam, or an officer or employee of the government of Guam sued only in an official capacity, is effected by serving the government of Guam in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint by registered or certified mail to the officer, employee, agency, or

corporation.

(B) Service on an officer or employee of the government of Guam sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the government of Guam-whether or not the officer or employee is sued also in an official capacity--is effected by serving the government of Guam in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4 (e), (f), or (g).

(3) The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served the Attorney General of Guam ; or

(B) the government of Guam in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or employee of the government of Guam sued in an individual capacity.

(j) Service Upon Foreign, State, or Local Governments.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(2) Service upon a state, territory, commonwealth, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state, territory, or commonwealth for the service of summons or other like process upon any such defendant.

(k) Territorial Limits of Effective Service.

Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant who could be subjected to the jurisdiction of the courts of Guam, and all process may be served when not prohibited by law beyond the territorial limits of Guam.

(l) Proof of Service. If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than a marshal or deputy marshal, the person shall make an affidavit thereof. Proof of service in a place not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable

treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 180 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

(n) Seizure of Property; Service of Summons Not Feasible.

(1) If a statute of Guam so provides, the court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule.

(2) Upon a showing that personal jurisdiction over a defendant cannot be obtained in Guam with reasonable efforts by service of summons in any manner authorized by this rule, the court may assert jurisdiction over any of the defendant's assets found within Guam by seizing the assets under the circumstances and in the manner provided by the law of the state in which the district court is located.

(o) Summons-Service By Publication Upon Party Not Inhabitant of, or Found Within Guam. Whenever a statute or order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of a summons by publication upon a party not an inhabitant of, or found within Guam, service shall be made by publication in a newspaper of general circulation for a period of time prescribed by the court and by mailing such summons, notice, or order to the last known residence (or post office box) of such party. Where a residence address and a post office box are known, service shall be made on both. Publications shall be proved by affidavit of an officer or agent of the publisher, stating the dates of publication with an attached copy of the order as published. Service by mail shall be accomplished by any form of U.S. postal delivery that provides for written proof of mailing, written proof of delivery, and restricted delivery to the addressee only. Mailing shall be proved by an affidavit establishing that the address employed is the most current mailing address known for the party being served, that a copy of the summons (notice or order) and the complaint were deposited with the U.S. Post Office, properly addressed, and having attached thereto the postal receipts reflecting a form of mailing prescribed above.

SOURCE: FRCP 4 (2006), GRCP 4 (1990), 7 GCA § 14106.

Rule 4.1 – Service of Other Process
Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by the marshal, a deputy marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(l).

SOURCE: FRCP 4.1 (2003).

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service: When required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served on each of the parties. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action brought by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Making Service.

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.
(2) Service under Rule 5(a) is made by:
(A) Delivering a copy to the person served by:
(i) handing it to the person;
(ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or
(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.
(C) If the person served has no known address, leaving a copy with the clerk of the court.
(D) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's

transmission facilities.

(3) Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties, and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served on the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, but depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses there to shall not be filed unless on order of the court or for use in the proceeding.

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court, as required by these rules, shall be made by filing them with the clerk of court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.

(f) Filing By Facsimile Machine. Documents may be filed with the clerk of court by facsimile machine (fax) under the following conditions:

(1) If the attorney is off-island and the attorney has local counsel, the document shall be faxed to local counsel who will make a plain paper copy of the faxed document and file it with the court.

(2) An attorney who is not required to have local counsel may not file documents by facsimile except in emergency situations where time is a critical factor.

(3) Facsimile transmissions will be accepted and filed by the clerk of the court during the working day. Facsimile transmissions received after 5:00 p.m. will be filed the following business day. Facsimile transmissions received on or before 5:00 p.m. of the due date will be filed on the day received. Facsimile transmissions received after 5:00 p.m. of the due date will not be considered timely filed.

(4) The clerk shall file stamp the facsimile copy as an original and the signature on the copy shall constitute the required signature under GRCP 11.

(5) All filings must be accompanied by a cover sheet stating the title of the document, the sender, the number of pages, the case caption and number, the name of the parties, the number of copies the clerk must take, and any other pertinent filing instructions.

(6) Unless otherwise permitted by the court, the clerk is not required to respond to facsimile inquiries to verify the receipt of a facsimile transmission. The clerk may so respond to telephone inquiries.

(7) All facsimile copies must be clear and legible. The clerk will notify the sender by telephone that the copies transmitted were not clear and legible and that the sender must retransmit. What is clear and legible shall be determined solely by the clerk of the court. When the clerk must notify counsel and/or parties who are off-island, the clerk will call collect.

(8) Any amendments to a filing require re-transmission of the entire filing, as amended. Single page corrections by facsimile will not be accepted.

(9) Original documents must be received by the clerk within 14 days of the filing of the facsimile transmission. If originals are not timely submitted, the documents transmitted by facsimile will not be considered proper filings, and the court may make such orders as are just, including but not limited to an order striking papers, staying further proceedings until compliance is complete, or dismissing the proceeding, or any part thereof upon receipt of the original document, the clerk shall remove and destroy the facsimile copy and insert the original in the file with the notation thereon Filed (with original filing information) by fax.

(g) Service By The Court. The court may serve an attorney with orders, judgments, notices, or any other documents by depositing the same into a box maintained for that attorney at the clerk's office. Service shall be deemed complete upon depositing the same into the box.

(h) Service On Party Appearing Pro Se. On application of a party, the court may order any party who is appearing without an attorney and who does not maintain an office or residence within Guam at which service can be made by delivery in the manner provided by Rule 5(b), either:

(1) to designate an address within Guam at which service can be made by delivery; or

(2) to designate the clerk as a person authorized to receive service of all documents requiring service on the party. If designated to accept service for a party, the clerk, on receipt of papers served in this representative capacity, shall forthwith mail the papers to the party at the party's last-known address.

SOURCE: FRCP 5 (2003), CNMI Rules of Civil Procedure, Rules 5(f), (g), and (h) (1996).

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the Superior Court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Memorial Day, Independence Day, Liberation Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other holiday appointed as a holiday by the President or Congress of the United States, by the laws of Guam, or by the Governor of Guam.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Shortening Time. When it is necessary to shorten time for the hearing of a motion, the party who desires to shorten time shall file a separate motion to shorten time, accompanied by a declaration setting forth the reasons why it is necessary to shorten time, and stating that the opposing party has been given notice of the motion to shorten time. If it is not possible to give the opposing party notice of the motion to shorten time, the moving party shall explain in the declaration why it is not possible to give notice, and what efforts were made to give notice. Whenever possible the court shall ensure time is afforded the opposing party to oppose by declaration or other pleading a motion to shorten time. The court need not hold a hearing on the motion to shorten time, but may order that the motion to shorten time be heard prior to the matter the movant desires heard on shortened time. If the motion to shorten time is granted, the court may order the parties to proceed with the matter at a time to be fixed by the court.

(d) For Motions–Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as provided in Rule 59(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be

served at some other time.

(e) Additional Time After Service By Mail under Rule 5(b)(2)(B), (C), or (D). Whenever a party has the right, or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(B)(2)(B), (C), of (D), 3 days shall be added to the prescribed period.

SOURCE: FRCP 6 (2003), CNMI Rules of Civil Procedure, Rule 5 (1996).

PART 3
PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

> **(1)** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.
>
> **(2)** The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided by these rules.
>
> **(3)** All motions shall be signed in accordance with Rule 11.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

SOURCE: FRCP 7 (2003).

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the

claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form; of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part of a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleadings as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

SOURCE: FRCP 8 (2003).

Rule 9. Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purposes of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Admiralty & Maritime claims. [Omitted]

SOURCE: FRCP 9 (2003).

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

SOURCE: FRCP 10 (2003).

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

> **(1)** it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> **(2)** the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> **(3)** the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or

are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

SOURCE: FRCP 11 (2003).

Rule 12. Defenses and Objections– When and How Presented–By Pleading or Motion–Motion for Judgment on the Pleadings

(a) When Presented. A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, except when service is made under Rule 4(e) and a different time is prescribed by in the order of court. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The government of Guam or an officer or agency thereof shall serve an answer to the complaint, or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the Attorney General or appropriate agency counsel of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined to one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for which relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule

56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)–(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief may be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

SOURCE: FRCP 12 (2003).

Rule 13. Counterclaim and Cross-Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaims against the government of Guam. These rules shall not be deemed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the government of Guam or an officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein~~,~~ or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b), when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

SOURCE: FRCP 13 (2003).

Rule 14. Third-Party Practice

(a) When Defendant May Bring In Third Party. At any time after the commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action, who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or who may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

SOURCE: FRCP 14 (2003).

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is

permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

> **(1)** relation back is permitted by the law that provides the statute of limitations applicable to the action, or
>
> **(2)** the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
>
> **(3)** the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the Attorney General of Guam or its designee, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of this paragraph (3) with respect to Guam or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleading. Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth

transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

SOURCE: FRCP 15 (2003).

Rule 16. Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion, or shall upon request of any party, direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;
(2) establishing early and continuing control so that the case will not be protracted because of lack of management;
(3) discouraging wasteful pretrial activities;
(4) improving the quality of the trial through more thorough preparation, and;
(5) facilitating the settlement of the case.

(b) Scheduling and Planning. Except in categories of actions exempted by local rules as inappropriate, the judge shall, after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties by a scheduling conference, telephone, mail, or other suitable means, enter a Scheduling Order that limits the time:

(1) to join other parties and to amend the pleadings;
(2) to file motions; and
(3) to complete discovery.

The scheduling order may also include

(4) modifications of the times to conduct and respond to discovery, and of the extent of discovery to be permitted;
(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and
(6) any other matters appropriate in the circumstances of the case.

A scheduling order shall not be modified except upon a showing of good cause and by leave of the court.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;
(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
(4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Guam Rules of Evidence;
(5) the appropriateness and timing of summary adjudication under Rule 56;
(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;
(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
(8) the advisability of referring matters to a master, judge or referee;
(9) settlement and the use of special procedures to assist in resolving the dispute when authorized by statute or local rule;
(10) the form and substance of the pretrial order;
(11) the disposition of pending motions;
(12) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
(13) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;
(14) an order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);
(15) an order establishing a reasonable limit on the time allowed for presenting evidence; and
(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final Pretrial Conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial Orders. After any conference held pursuant to this rule, an order may be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order.

(f) Sanctions. If a party or a party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or a party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among other any of the orders provided in Rule (37(b)(2)(B),(C),(D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

SOURCE: FRCP 16 (2003).

PART 4
PARTIES

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that persons own name without joining the party for whose benefit the action is brought; and when a statute of Guam so provides, an action for the use or benefit of another shall be brought in the name of the Government of Guam. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to Sue or Be Sued. The capacity to sue or be sued will be as provided by the laws of Guam.

SOURCE: FRCP 17 (2003), GRCP 17 (1990).

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be

joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

SOURCE: FRCP 18 (2003).

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as prescribed in subdivision (a) (1)–(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of GRCP Rule 23.

SOURCE: FRCP 19 (2003).

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any

question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

SOURCE: FRCP 20 (2003).

Rule 21. Misjoinder and Non-Joinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

SOURCE: FRCP 21 (2003).

Rule 22. Interpleader

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

SOURCE: GRCP 22 (1990).

Rule 23. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims and defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

> (1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest, or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular for;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision(b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate,(A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegation as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(f) Appeals. The Supreme Court may in its discretion permit an appeal from an order of the Superior Court granting or denying class action certification under this rule if application is made to it within ten (10)days after entry of the order. An appeal does not stay proceedings in the Superior Court unless the Superior Court judge or the Supreme Court so orders.

SOURCE: FRCP 23 (2003), GRCP 23 (1990).

Rule 23.1. Derivative Actions by Shareholders

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains, or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority, and, if necessary,

from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

SOURCE: FRCP 23.1 (2003).

Rule 23.2. Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

SOURCE: FRCP 23.2 (2003).

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene. When the validity of an act of the Guam Legislature affecting the public interest is drawn in question in any action to which the Government of Guam or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General as provided in Rule 4(i)(1)(A). A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of

any right otherwise timely asserted.

SOURCE: FRCP 24 (2003).

Rule 25. Substitution of Parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name, but the court may require the officer's name to be added.

SOURCE: FRCP 25 (2003).

PART 5
DEPOSITIONS AND DISCOVERY

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures. Except in categories of proceedings specified in Rule 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(E) Unless otherwise ordered by the court, the following categories of proceedings are exempt from initial disclosure under Rule 26(a)(1):

(i) an action for review on an administrative record;

(ii) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(iii) an action brought without counsel by a person in custody of the United States, a state, territory or a subdivision thereof;

(iv) an action to enforce or quash an administrative summons or subpoena;

(v) a proceeding ancillary to proceedings in other courts;

(vi) an action to enforce an arbitration award;

(vii) a petition for adoption or termination of parental rights;

(viii) a proceeding for adult commitment for mental health services;

(ix) a petition for annulment;

(x) an action for child support;

(xi) an action for collection of money which is uncontested or a default;

(xii) an action for divorce uncontested or a default;

(xiii) a petition for guardian ad litem/settlement for juvenile;

(xiv) a petition for guardianship of an adult;

(xv) a petition for guardianship of a juvenile;

(xvi) a petition for juvenile (PINS, BC, Drug Court, Delinquency);

(xvii) an order to show cause for a name change;

(xviii) a petition for probate;

(xix) an action for a protective order or injunction; and

(xx) proceedings for writs.

These disclosures must be made at or within 14 days after the Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan. In ruling on the objection, the court must determine what disclosures--if any--are to be made, and set the time for disclosure. Any party first served or otherwise joined after the Rule 26(f) conference must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Guam Rules of Evidence.
(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures. In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition

designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Guam Rules of Evidence, are waived unless excused by the court for good cause.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rules 26(a)(1) through (3) must be made in writing, signed, and served.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

(2) Limitations. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of

litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without

revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;
(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;
(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
(5) that discovery be conducted with no one present except persons designated by the court;
(6) that a deposition, after being sealed, be opened only by order of the court;
(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and
(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery. Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f). Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses. A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process

or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Conference of Parties; Planning for Discovery. Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E) or when otherwise ordered, the parties must, as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan that indicates the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(4) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. A court may order that the parties or attorneys attend the conference in person. If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule (i) require that the conference between the parties occur fewer than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b), and (ii) require that the written report outlining the discovery plan be filed fewer than 14 days after the conference between the parties, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

[Committee Note: The Committee instructs that the term "document" includes electronically stored information. The Committee recognizes FRCP 26 has been amended to manage discovery of electronic information and the Committee intends to prepare in the near future its own set of rules to cover discovery procedures concerning electronically stored information.]

SOURCE: FRCP 26 (2003).

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in the Superior Court may file a verified petition in that court in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be a party to an action cognizable in the Superior Court but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4), the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The deposition may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the Superior Court, in accordance with the provisions

of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of the Superior Court or before the taking of an appeal if the time therefor has not expired, the judge before whom the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Superior Court. In such case the party who desires to perpetuate the testimony may make a motion in the Superior Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Superior Court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the Superior Court.

(c) Perpetuation by Action. This rule does not limit the power of the Superior Court to entertain an action to perpetuate testimony.

SOURCE: FRCP 27 (2003).

Rule 28. Persons Before Whom Depositions may be Taken

(a) Within Guam. Within Guam or within a state, territory, commonwealth, or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In Foreign Countries. Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by a law of Guam, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the

requirements for depositions taken on Guam under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

SOURCE: FRCP 28 (2003).

Rule 29. Stipulations Regarding Discovery Procedure

Unless otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

SOURCE: FRCP 29 (2003).

Rule 30. Depositions Upon Oral Examination

(a) When Depositions May Be Taken; When Leave Required.

(1) A Party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave Guam and be unavailable for examination unless deposed before that time.

(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its

behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by such means is taken at the place where the deponent is to answer questions.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections.

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Guam Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 30(d) (4).

(2) Unless otherwise authorized by the court or stipulated by the parties or when an interpreter is involved, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person , or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it may be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Delivery by Officer; Exhibits; Copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

SOURCE: FRCP 30 (2003).

Rule 31. Depositions Upon Written Questions

(a) Serving Questions; Notice.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined has already been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

SOURCE: FRCP 31 (2003).

Rule 32. Use of Depositions in Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Guam Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or
(B) that the witness is outside of Guam, unless it appears that the absence of the witness was procured by the party offering the deposition; or
(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or
(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of Guam, jurisdiction of the United States, of any State, or of any territory or commonwealth of the United States and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Guam Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Form of Presentation. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

SOURCE: FRCP 32 (2003).

Rule 33. Interrogatories to Parties.

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 50 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation,

interrogatories may not be served before the time specified in Rule 26(d).

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) Option to Produce Business Records.

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

SOURCE: FRCP 33 (2003).

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request shall set forth, either by individual item or by category, the items to be inspected and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

SOURCE: FRCP 34 (2003).

Rule 35. Physical and Mental Examinations of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner,

conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

SOURCE: FRCP 35 (2003).

Rule 36. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail

the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provision of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

SOURCE: FRCP 36 (2003).

Rule 37. Failure to Make Disclosure or Cooperate in Discovery; Sanctions

(a) Motion For Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

> **(1) Appropriate Court.** An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the district where the discovery is being, or is to be, taken.
>
> **(2) Motion.**
>
> > **(A)** If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit an inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply With Order.

(1) Sanctions by Court in District Where Deposition is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the

district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order made under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to

requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) [Omitted]

(f) [Omitted]

(g) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

PART 6
TRIALS

Rule 38. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the laws of Guam or the Organic Act of Guam, Title 48 U.S.C.A. as amended shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

SOURCE: FRCP 38 (2003).

Rule 39. Trial by Jury or by the Court

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution, the Organic Act of Guam or the laws of Guam.

(b) By the Court. Issues not demanded for trial by jury, as provided in Rule 38, shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury, the court upon motion or of its own initiative, may try any issue with an advisory jury or, except in actions against the when the Organic Act of Guam or the laws of Guam provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

SOURCE: FRCP 39 (2003).

Rule 40. Assignment of Cases for Trial

The courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient or (4) as provided by the Rules of the Superior Court of Guam or by Administrative Rule of the Supreme Court of Guam. Precedence shall be given to actions entitled thereto by statute.

SOURCE: FRCP 40 (2003).

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of the Organic Act of Guam or laws of Guam, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state commonwealth or territory of the United States an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial

or hearing.

(d) Costs of Previously-Dismissed Action. If a plaintiff who has once dismissed an action in any court as contemplated in Rule 41(a)(1) commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

SOURCE: FRCP 41 (2003).

Rule 42. Consolidation; Separate Trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Organic Act of Guam or laws of Guam.

SOURCE: FRCP 42 (2003).

Rule 43. Taking of Testimony.

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless otherwise provided by the laws of Guam, these rules, Title 6 of the Guam Code Annotated (Evidence), or other rules adopted by the Supreme Court provide otherwise. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

[(b), (c) Abrogated]

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

SOURCE: FRCP 43 (2003).

Rule 44. Proof of Official Record.

(a) Authentication.

(1) Domestic. An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. Except for an official record kept within the Republic of Palau, Federated States of Micronesia, or the Republic of the Marshals which record shall be authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, a foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search; no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

SOURCE: FRCP 44 (2003).

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Title 6, Guam Code Annotated (Evidence). The court's determination shall be treated as a ruling on a question of law.

SOURCE: FRCP 44.1 (2003).

Rule 45. Subpoena

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state the name of the court from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil case number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) A subpoena commanding attendance at a trial or hearing shall issue from the court in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court in which the action is pending. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court in which the action is pending. If the action is pending out of Guam, a subpoena may be issued by the clerk of court, and the court in which the deposition is being taken or in which the production or inspection is to take place shall, for the purposes of these rules, be considered the court in which the action is pending.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena instead of the clerk if the attorney is authorized to practice therein.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Government of Guam or an officer or agency thereof, fees and mileage need not be tendered. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within Guam.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

SOURCE: FRCP 45 (2003); Nevada Rules of Civil Procedure (2005).

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

SOURCE: FRCP 46 (2003).

Rule 47. Selection of Jurors

(a) Examination of Jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) Peremptory Challenges. The court shall allow the number of peremptory challenges provided by 7 GCA § 22120.

(c) Alternate Jurors. The court may direct that not more than six jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be empaneled, two peremptory challenges if three or four alternate jurors are to be impaneled, and three peremptory challenges if five or six alternate jurors are to be impaneled. The additional peremptory challenges may be used against alternate jurors only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(d) Excuse. The court may for good cause excuse a juror or alternate juror from service during trial or deliberation.

SOURCE: FRCP 47 (2003), GRCP 47 (1990).

Rule 48. Number of Jurors–Participation in Verdict

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47(d). Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

SOURCE: FRCP 48 (2003).

Rule 49. Special Verdicts and Interrogatories

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answers or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact, the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict, or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the

jury for further consideration of its answers and verdict, or shall order a new trial.

SOURCE: FRCP 49 (2003).

Rule 50. Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings.

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewing Motion for Judgment After Trial; Alternative Motion for New Trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment–and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,

(B) order a new trial, or

(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned;

(A) order a new trial, or

(B) direct entry of judgment as a matter of law.

(c) Granting Renewed Motion for Judgment as a Matter of Law; Conditional Rulings; New Trial Motion

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after entry of the judgment.

(d) Same: Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

SOURCE: FRCP 50 (2003).

Rule 51. Instructions to Jury; Objections; Preserving a Claim of Error

(a) Requests.

(1) A party may, at the close of the evidence or at an earlier reasonable time that the court directs, file and furnish to every other party written requests that the court instruct the jury on the law as set forth in the requests.

(2) After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated at an earlier time for requests set under Rule 51(a)(1), and

(B) with the court's permission file untimely requests for instructions on any issue.

(b) Instructions. The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing to the proposed instructions and actions on requests before the instructions and arguments are delivered; and

(3) may instruct the jury at any time after trial begins and before the jury is discharged.

(c) Objections.

(1) A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds of the objection.

(2) An objection is timely if:

(A) a party that has been informed of an instruction or action on a request before the jury is instructed and before final jury arguments, as provided by Rule 51(b)(1), objects at the opportunity for objection required by Rule 51(b)(2); or

(B) a party that has not been informed of an instruction or action on a request before the time for objection provided under Rule 51(b)(2) objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Plain Error.

(1) A party may assign as error:

(A) an error in an instruction actually given if that party made a proper objection under Rule 51(c), or

(B) a failure to give an instruction if that party made a proper request under Rule 51(a), and--unless the court made a definitive ruling on the record rejecting the request--also made a proper objection under Rule 51(c).

(2) A court may consider a plain error in the instructions affecting substantial rights that has not been preserved as required by Rule 51(d)(1)(A) or (B).

SOURCE: FRCP 51 (2003).

Rule 52. Findings by the Court; Judgment on Partial Findings

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) Amendment. On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings–or make additional findings–and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) Judgment on Partial Findings. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

SOURCE: FRCP 52 (2003).

Rule 53. Masters

(a) Appointment.

(1) Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by

(i) some exceptional condition, or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available judge of the court.

(2) A master must not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under 28 U.S.C. § 455 unless the parties consent with the court's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(3) In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing Master.

(1) Notice. The court must give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

(2) Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances–if any–in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(h).

(3) Entry of Order. The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455 and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.

(4) Amendment. The order appointing a master may be amended at any time after notice to the parties, and an opportunity to be heard.

(c) Master's Authority. Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. The master may by order impose upon a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Evidentiary Hearings. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

(e) Master's Orders. A master who makes an order must file the order and promptly serve a copy on each party. The clerk must enter the order on the docket.

(f) Master's Reports. A master must report to the court as required by the order of appointment. The master must file the report and promptly serve a copy of the report on each party unless the court directs otherwise.

(g) Action on Master's Order, Report, or Recommendations.

(1) Action. In acting on a master's order, report, or recommendations, the court must afford an opportunity to be heard and may receive evidence, and may: adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the master with

instructions.

(2) Time To Object or Move. A party may file objections to–or a motion to adopt or modify– the master's order, report, or recommendations no later than 20 days from the time the master's order, report, or recommendations are served, unless the court sets a different time.

(3) Fact Findings. The court must decide de novo all objections to findings of fact made or recommended by a master unless the parties stipulate with the court's consent that:

(A) the master's findings will be reviewed for clear error, or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

(4) Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Procedural Matters. Unless the order of appointment establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(h) Compensation.

(1) Fixing Compensation. The court must fix the master's compensation before or after judgment on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after notice and an opportunity to be heard.

(2) Payment. The compensation fixed under Rule 53(h)(1) must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) Allocation. The court must allocate payment of the master's compensation among the parties after considering the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(i) Appointment of Magistrate Judge. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge expressly provides that the reference is made under this rule.

SOURCE: FRCP 53 (2003).

PART 7
JUDGMENT

Rule 54. Judgments; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay; and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties; shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; Attorneys' Fees.

> **(1) Costs Other than Attorneys' Fees.** Except when express provision therefor is made either in a statute of Guam or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the Government of Guam, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

(2) Attorneys' Fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e) or Rule 78. The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a).

(D) The court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of Rule 53(a)(1).

(E) The provisions of subparagraphs (A) through (D) do not apply to claims for fees and expenses as sanctions for violations of these rules.

SOURCE: FRCP 54 (2003).

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for

failure to appear and is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper, and shall accord a right of trial by jury to the parties when and as required by any statute.

(c) Setting Aside Default. For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the Government of Guam. No judgment by default shall be entered against the Government of Guam or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

SOURCE: FRCP 55 (2003).

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to

incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

SOURCE: FRCP 56 (2003).

Rule 57. Declaratory Judgments

The procedure for obtaining a declaratory judgment shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

SOURCE: FRCP 57 (2003).

Rule 58. Entry of Judgment

(a) Separate Document.

(1) Every judgment and amended judgment must be set forth on a separate document, but a separate document is not required for an order disposing of a motion:

(A) for judgment under Rule 50(b);

(B) to amend or make additional findings of fact under Rule 52(b);

(C) for attorney fees under Rule 54;

(D) for a new trial, or to alter or amend the judgment, under Rule 59; or

(E) for relief under Rule 60.

(2) Subject to Rule 54(b):

(A) unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(i) the jury returns a general verdict,

(ii) the court awards only costs or a sum certain, or

(iii) the court denies all relief;

(B) the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(i) the jury returns a special verdict or a general verdict accompanied by interrogatories, or

(ii) the court grants other relief not described in Rule 58(a)(2).

(b) Time of Entry. Judgment is entered for purposes of these rules:

(1) if Rule 58(a)(1) does not require a separate document, when it is entered in the civil docket under Rule 79(a), and

(2) if Rule 58(a)(1) requires a separate document, when it is entered in the civil docket under Rule 79(a) and when the earlier of these events occurs:

(A) when it is set forth on a separate document, or

(B) when 150 days have run from entry in the civil docket under Rule 79(a).

(c) Cost or Fee Awards.

(1) When a timely motion for attorney fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and has become effective to order that the motion have the same effect under the Supreme Court of Guam Rules of Appellate Procedure, Rule 4 as a timely motion under Rule 59.

(d) Request for Entry. A party may request that judgment be set forth on a separate document as required by Rule 58(a).

SOURCE: FRCP 58 (2003).

Rule 59. New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of Guam; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of Guam. On a motion for a new trial in an action tried without a jury, the court

may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On Court's Initiative; Notice; Specifying Grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial, for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

SOURCE: FRCP 59 (2003).

Rule 60. Relief From Judgments or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party, and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior

judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as required by law, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

SOURCE: FRCP 60 (2003).

Rule 61. Harmless Error

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

SOURCE: FRCP 61 (2003).

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exceptions–Injunctions, Receiverships, and Patent Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional

findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the Government of Guam or Agency Thereof. When an appeal is taken by the Government of Guam or an officer or agency thereof or by direction of any department of the Government of Guam and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Reserved.

(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal, or to suspend, modify, restore, or grant an injunction during the pendency of an appeal, or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments, and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

SOURCE: FRCP 62 (2003)

Rule 63. Inability of a Judge to Proceed

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

SOURCE: FRCP 63 (2003).

PART 8
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property, for the purpose of securing satisfaction of the judgment ultimately to be entered in the action, are available under the circumstances and in the manner provided by the law of Guam.

SOURCE: FRCP 64 (2003).

Rule 65. Injunctions

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be

extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunctions shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Government of Guam or of an officer or agency thereof, or of a party in a domestic relations case or in a case involving the cessation of abuse.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

SOURCE: FRCP 65 (2003).

Rule 65.1. Security: Proceedings Against Sureties

Whenever these rules, including the Supplemental Rules for Certain Admiralty and Maritime Claims, require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

SOURCE: FRCP 65.1 (2003).

Rule 66. Receivers Appointed by the Courts

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of Guam or as provided in rules promulgated by the Supreme Court of Guam. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

SOURCE: FRCP 66 (2003).

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of law. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

SOURCE: FRCP 67 (2003).

Rule 68. Offer of Judgment

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

SOURCE: FRCP 68 (2003).

Rule 69. Execution and Garnishment

(a) In General. Process to enforce a judgment for the payment of money may be by a writ of execution, or in accordance with the Guam Code of Civil Procedure, provided, that the issuance of a writ of execution is not required.

(b) In any case where more than one writ of garnishment on a judgment has been issued by any party, it shall be the duty of the clerk, before taxing costs or issuing a short copy or other transcript of the judgment, to present the file to one of the judges who shall inquire into the circumstances, and may disallow all costs which have been needlessly incurred in the attempt to collect the judgment. In no case shall the defendant be charged with the costs of an attachment which has been quashed.

(c) Whenever a garnishee has in the answer made claim that the defendant's earnings are exempt, or whenever a defendant has made such a claim to the clerk, either orally or in writing, the clerk shall forthwith set the case down for a hearing not less than five days thereafter on said claim of exemption, and shall immediately notify the plaintiff or the plaintiff's attorney by ordinary mail of the day and hour set for such hearing, and that the plaintiff must appear in order to oppose such claim or exemption.

(d) After the filing of the garnishee's answer, the garnishee may give notice thereof to the party at whose instance the garnishment was issued, and if such party shall not join issue thereon within five days after such notice, the garnishee shall be entitled as of course to judgment in accordance with the answer, unless the time shall be extended by the court.

(e) No motion pertaining to the oral examination of any garnishee shall be filed and/or served upon any garnishee until leave of court is first had and obtained. No garnishee shall be required to appear for oral examination except upon express order of a judge, and after the judge has examined all the papers in the case. No subpoena requiring a garnishee to produce papers, records, or documents shall ne issued except upon order of a judge.

(f) Against Certain Public Officers. When a judgment has been entered against a collector or other officer of revenue, and the judgment is, under the laws of Guam, one against the government of Guam or any of its agencies or instrumentalities, execution shall not issue against the officer or the officer's property but the final judgment shall be satisfied as provided in such laws.

SOURCE: GRCP 69 (1990).

Rule 70. Judgment for Specific Acts; Vesting Title

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party, by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within Guam, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the court.

Note:

The contents of the prior GRCP 70(a) have been deleted at the recommendation of the committee. The issue of deficiency judgments after repossession of personal property is now governed by the UCC as adopted by Guam, contained in Title 13 of the Guam Code Annotated, and as interpreted by the Guam Supreme Court in *Town House Department Stores, Inc. v. Hi Sup Ahn,* 2003 Guam 6 ¶ 41 n. 25, which states, "We note, however, that under the Uniform Commercial Code, as enacted in Guam prior to the recent amendments found in P.L. 26-172 (repealed and reenacted Jan. 5, 2003), a deficiency judgment could only be awarded if the collateral was sold in a fair and reasonable manner. *See* Title 13 GCA § 9504(3) (1993); *see Bank of Guam v. Del Priore,* 2001 Guam 10, ¶ 10."

SOURCE: FRCP 70 (2003).

Rule 71. Process in Behalf of and Against Persons not Parties

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

SOURCE: FRCP 71 (2003).

Rule 71A. Condemnation of Property

(a) Applicability of Rules. These rules govern the procedure for the condemnation of real and personal property under the power of eminent domain.

(b) Joinder of Properties. The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) Complaint.

(1) Caption. The complaint shall contain a caption as provided in Rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) Contents. The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property; a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in subdivision (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in subdivision (e) of this rule. The court meanwhile may order such distribution of a deposit as the facts warrant.

(3) Filing. In addition to filing the complaint with the court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

(d) Process.

(1) Notice; Delivery. Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.

(2) Same; Form. Each notice shall state the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of the defendant's property sufficient for its identification, the interest

to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within 20 days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and the attorney's address. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(3) Service of Notice.

(A) Personal Service. Personal service of the notice (but without copies of the complaint) shall be made in accordance with Rule 4(c) and (d) upon a defendant who resides within Guam and whose residence is known.

(B) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that the attorney believes a defendant cannot be personally served, because after diligent inquiry within Guam the defendant's place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is outside of Guam, service of the notice shall be made on this defendant by publication in a newspaper of general circulation on Guam once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to "Unknown Owners."

Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(4) Return; Amendment. Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons under Rule 4.

(e) Appearance or Answer. If a defendant has no objection or defense to the taking of the defendant's property, the defendant may serve a notice of appearance designating the property in which the defendant claims to be interested. Thereafter, the defendant shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of the property, the defendant shall serve an answer within 20 days after the service of notice upon the defendant. The answer shall identify the property in which the defendant claims to have an interest, state the nature and extent of the interest claimed, and state all the defendant's objections and defenses to the taking of the property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not the defendant has previously appeared or answered, the defendant may present evidence as to the amount of the compensation to be paid for

the property, and the defendant may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

(f) Amendment of Pleadings. Without leave of court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivision (i) of this rule. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b), upon any party affected thereby who has appeared and, in the manner provided in subdivision (d) of this rule, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the court for the use of the defendants at least one copy of each amendment and shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by subdivision (e) of this rule a defendant may serve an answer to the amended pleading, in the form and manner and with the same effect as there provided.

(g) Substitution of Parties. If a defendant dies or becomes incompetent or transfers an interest after the defendant's joinder, the court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subdivision (d)(3) of this rule.

(h) Trial. Any party may have a trial by jury of the issue of just compensation by filing a timely demand.

(i) Dismissal of Action.

(1) As of Right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) By Stipulation. Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) By Order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) Effect. Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

(j) Deposit and its Distribution. The plaintiff shall deposit with the court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

(k) Costs. Costs are not subject to Rule 54(d).

SOURCE: FRCP 71A (2003).

Rule 72. VACANT

Note: Rule 72 in the Federal Rules of Civil Procedure is entitled, "Magistrate Judges; Pretrial Orders." When the Guam Rules of Civil Procedure were adopted in the Court Reorganization Act in Public Law 9-256, and amended by order of the Judicial Council of November 28, 1989, and as reenacted by the "Frank G. Lujan Memorial Court Reorganization Act of 1992" enacted in Public Law 21-147, there was no Rule 72 and there was no rule patterned on the version of the Federal Rules of Civil Procedure, since the provision for magistrate judges handling certain matters does not apply to the Superior Court of Guam. The Committee concurs that there is no equivalent version of this rule appropriate for the Superior Court of Guam, and therefore left this rule vacant.

Rule 73. VACANT

Note: See note to Rule 72.

Rule 74. VACANT

Note: See note to Rule 72.

Rule 75. VACANT

Note: See note to Rule 72.

Rule 76. VACANT

Note: See note to Rule 72.

Rule 77. Courts and Clerks

(a) Courts Always Open. The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place within Guam.

(c) Clerk's Office and Orders by Clerk. The clerk's office, with the clerk or a deputy in attendance, shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown. The Clerk of Court is additionally authorized to grant, sign and enter the following orders without further direction of the court:

(1) Orders on consent satisfying a judgment or orders on consent for the payment of money;

(2) Judgments on verdicts or decisions of the court in circumstances authorized in Rule 58 of these rules and default judgments as provided in Rule 55 of these rules;

(3) Orders for appearance for examination in open court pursuant to Rule 69(a) of these rules pursuant to 7 GCA § 23201 [examination of judgment debtors];

(4) Orders to Show Cause where a judgment debtor has failed to appear in accordance with an order to do so issued in accordance with Rule 69(a) of these rules or make payment in accordance with an order issued pursuant to 7 GCA § 23207;

(5) Orders permitting parties to proceed without prepayment of costs; and

(6) Judgments based upon a confession of judgment or upon a stipulation of the parties for entry of judgment.

Any action taken by the clerk pursuant to this subsection (c) may be suspended, altered, or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5(b) upon each party who is not in default for failure to appear, and shall make a note in the docket of the service. Any party may in addition serve a notice of such entry in the manner provided in Rule 5(b) for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 4(c) of the Supreme Court of Guam Rules of Appellate Procedure.

SOURCE: FRCP 77 (2003) and 7 Guam Code Annotated Chapter 23 Article 2.

Rule 78. Motions

Unless impracticable, each judge shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite the business of the court, the Supreme Court may by rule, or a judge may by order, make provisions for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

SOURCE: FRCP 78 (2003).

Rule 79. Books and Records Kept by the Clerk and Entries Therein

(a) Civil Docket. The clerk shall keep a permanent memorial or record known as the "civil docket" of such form and style as may be prescribed by the Presiding Judge of this court with the approval of the Judicial Council, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and writs or returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word "jury" on the folio assigned to that action.

(b) Indices and other records; Calendars. Suitable indices of the civil docket shall be kept by the clerk under the direction of the court. The docket required by this rule is the same docket required by 7 GCA § 26710. There shall be prepared, under the direction of the court, calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

(c) Judgment Roll, Clerk's Docket and Register of Action no longer required. Notwithstanding the provisions of 7 GCA § 21605, § 26710 and § 31111, no Judgment Roll, Clerk's Docket or Register of Actions shall be kept in the Superior Court; the Civil Docket required by subsection (a) of this Rule being sufficient for the cited sections and of 7 GCA § 21603.

(d) Other Books and Records of the Clerk. The clerk shall also keep such other books and records as may be required from time to time by the Judicial Council.

SOURCE: FRCP 79 (2003), GRCP 79 (1990).

Rule 80. Stenographer; Stenographic Report or Transcript as Evidence

Whenever the testimony of a witness at a trial or hearing which was stenographically or electronically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported, transcribed or recorded the testimony.

SOURCE: FRCP 80 (2003).

PART 9
GENERAL PROVISIONS

Rule 81. VACANT.

Rule 82. Jurisdiction Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the Superior Court of Guam.

SOURCE: GRCP 82.

Rule 83. VACANT.

NOTE: The committee omitted this rule because the 'rules by court' is the current Rules of Superior Court.

Rule 84. Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

SOURCE: FRCP 84 (2003).

Rule 85. Title

These rules may be known and cited as the Guam Rules of Civil Procedure (GRCP).

SOURCE: GRCP, Rule 87 (1990).

Rule 86. Effective Date

(a) Effective Date. These rules will take effect on June 1, 2007.

SOURCE: GRCP Rule 88 with changes.

Rule 87. VACANT

Note: Now rule 85.

Rule 88. VACANT

Note: Now rule 86 with changes.

Rule 89. VACANT

Note: Rule 89 used to read, "Sections of the Code of Civil Procedure Nullified by These Rules. The adoption of these Rules (Guam Rules of Civil Procedure) created a conflict with certain sections of the Code of Civil Procedure (Title 7--this Title). Pursuant to CCP § 123, '[a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.' Therefore, the following sections of the Code of Civil Procedure shall be treated as having no further force or effect," followed by a list of sections in the Guam Code of Civil Procedure that had been abrogated by the GRCP.

The Committee believes it is no longer necessary to delineate the rules that were abrogated by the GRCP.

Rule 90. Fee Exemption for Government of Guam

No costs or fees, except as specifically provided by statute and except for fees charged for Reporter's Transcripts and other Reporter's services, shall be charged for any services rendered on behalf of an agency of the Government of Guam, nor shall any filing fees be charged an agency of the Government of Guam. In addition to any other provision of these rules, the foregoing provision shall apply to all fees as set forth in Supreme Court of Guam Promulgation Order 03-012 promulgating the fee schedule for the Superior Court of Guam, as well as fees for small claims cases. An 'agency' of the Government of Guam is any department, agency, instrumentality of the Government of Guam, or other entity which is funded by an annual appropriation from the General Fund. An agency shall submit a Certificate of Waiver signed by the Certifying Officer of the agency under penalty of perjury in a form attached in the Appendix as Form No. 35, that such agency is funded by an annual appropriation from the General Fund and is exempt from the filing fees or costs.

Rule 91. OMITTED

Note: The Judicial Council enacted new fees which are no longer part of the GRCP. Adopted October 24, 2003, effective, December 1, 2003, by Promulgation Order No. 03-008, Supreme Court of Guam. Repealed December 22, 2003, by Promulgation Order No. 03-012. Re-instituted April 30, 2004, effective, July 1, 2004, by Judicial Council Resolution No. JC04-010 and amended on August 31, 2006, effective September 1, 2006, by Judicial Council Resolution No. JC06-016.

Rule 92. OMITTED

Note: The Small Claims rules are now contained in the Miscellaneous Rules and not the GRCP.

Rule 93. OMITTED

Note: The Records Retention rules are now contained in the Miscellaneous Rules and not the GRCP.

GUAM RULES OF CIVIL PROCEDURE

APPENDIX OF FORMS

FORM No. 1

SUMMONS

A. B., Plaintiff	)	
	)	
v.	)	Summons
C. D., Defendant	)	
	)	

To the above-named Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

_____,

Clerk of Court.

Dated _____

(This summons is issued pursuant to Rule 4 of the Guam Rules of Civil Procedure.)

FORM No. 2A

NOTICE OF LAWSUIT AND REQUEST
FOR WAIVER OF SERVICE OF SUMMONS

TO: (A)
[as (B) of (C)]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the Superior Court of Guam and has been assigned case number _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (E) days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is outside Guam).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Guam Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ___ day of _____, _____.

Signature of Plaintiff's Attorney or Unrepresented Plaintiff

Notes:

A--Name of individual defendant (or name of officer or agent of corporate defendant)

B--Title, or other relationship of individual to corporate defendant

C--Name of corporate defendants, if any

D–Case number

E--Addresses must be given at least 30 days (60 days if located outside Guam) in which to return waiver

FORM No. 2B

WAIVER OF SERVICE OF SUMMONS

TO: (name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of (caption of action), which is case number _____ in the Superior Court of Guam. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after (date request was sent), or within 90 days after that date if the request was sent outside Guam.

_____ Date

_____ Signature

Printed/typed name: _____

[as _____]

[of _____]

To be printed on reverse side of the waiver form or set forth at the foot of the form:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Guam Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in Guam who, after being notified of an action and asked by a plaintiff located in Guam to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives

service of the summons retains all defenses and objections (except any relating to the summons or the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

FORM No. 3.
COMPLAINT ON PROMISSORY NOTE

Plaintiff complains of defendant:

1. Jurisdiction is vested in this court pursuant to Section _____.

2. Defendant on or about _____, executed and delivered to plaintiff a promissory note in the following words and figures: [here set out the note verbatim]; a copy of which is hereto annexed as Exhibit A, whereby defendant promised to pay to plaintiff [or order] on [date] the sum of _____ dollars with interest thereon at the rate of ____ per cent per annum.

3. Defendant owes plaintiff the amount [of said note] and interest.

4. Wherefore plaintiff demands judgment against defendant for the amount of _____ dollars, interest and costs.

SIGNED:_____.

(Attorney for Plaintiff)

FORM No. 4.
COMPLAINT ON AN ACCOUNT

1. Allegation of Jurisdiction.

2. Defendant owes plaintiff_____ according to the account hereto annexed as Exhibit A.

3. Wherefore plaintiff demands judgment against defendant for the amount of_____ dollars, interest and costs.

Signed:_____
(Attorney for Plaintiff)

FORM No. 5.

COMPLAINT FOR GOODS SOLD AND DELIVERED

1. Allegation of Jurisdiction.

2. Defendant owes plaintiff $_____ for goods sold and delivered by plaintiff to defendant between _____ and _____ [dates of delivery].

3. Wherefore plaintiff demands judgment against defendant for the amount of _____ dollars, interest and costs.

Signed:_____

(Attorney for Plaintiff)

FORM No. 6.

COMPLAINT FOR MONEY LENT

1. Allegation of Jurisdiction.

2. Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on _____(date)_____.

3. Wherefore plaintiff demands judgment against defendant for the amount of _____ dollars, interest and costs.

Signed:_____

(Attorney for Plaintiff)

FORM No. 7.

COMPLAINT FOR MONEY PAID BY MISTAKE

1. Allegation of Jurisdiction.

2. Defendant owes plaintiff _____ dollars for money paid by plaintiff to defendant by mistake on _____(date)_____, under the following circumstances: (here state circumstances with particularity--see Rule 9(b)).

Signed:_____

(Attorney for Plaintiff)

FORM No. 8

COMPLAINT FOR MONEY HAD AND RECEIVED

1. Allegation of Jurisdiction.

2. Defendant owes plaintiff _____ dollars for money had and received from one G.H. on ___(date)___, to be paid by defendant to plaintiff.

3. Wherefore plaintiff demands judgment against defendant for the amount of _____ dollars, interest and costs.

Signed:_____

(Attorney for Plaintiff)

FORM No. 9

COMPLAINT FOR NEGLIGENCE

1. Allegation of Jurisdiction.

2. On ___(date)___, in a public highway called _____, in _____, Guam, defendant negligently drove a motor vehicle against plaintiff who was then crossing the highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of _____ dollars.

4. Wherefore plaintiff demands judgment against defendant for the amount of _____ dollars and costs.

Signed:_____

(Attorney for Plaintiff)

FORM No. 10

COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C.D. OR E.F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILLFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE.

A.B., Plaintiff	)	
	)	
vs.	)	COMPLAINT
	)	
C.D. and E.F.,	)	
Defendants,	)	

1. Allegation of Jurisdiction.

2. On ___(date)___, in a public highway called _____, in _____, Guam, defendant C.D. or defendant E.F., or both defendants C.D. and E.F., wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing the highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of _____ dollars.

4. Wherefore plaintiff demands judgment against C.D. or against E.F. or against both for the amount of _____ dollars and costs.

Signed:_____

(Attorney for Plaintiff)

FORM No. 11
COMPLAINT FOR CONVERSION

1. Allegation of Jurisdiction.

2. On or about ___(date)___, defendant converted to his own use ____ bonds of the _____ company (here insert brief identification as by number and issue [or other appropriate description of converted property]) of the value of _____ dollars, the property of the plaintiff.

3. Wherefore plaintiff demands judgment against defendant for the amount of _____ dollars, interest and costs.

Signed:_____

(Attorney for Plaintiff)

FORM No. 12
COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. Allegation of Jurisdiction.

2. On or about ___(date)___, plaintiff and defendant entered in to an agreement in writing, a copy of which is hereto annexed as Exhibit A.

3. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but the defendant refused to accept the tender and refused to make the conveyance.

4. Plaintiff now offers to pay the purchase price.

Wherefore, plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of _____ dollars, and (3) that if specific performance is not granted plaintiff have judgment against the defendant in the sum of _____ dollars.

Signed:_____

(Attorney for Plaintiff)

FORM No. 13

COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18(b)

A.B.	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
C.D. and E.F.,	)	
	)	
Defendants,	)	

1. Allegation of Jurisdiction.

2. Defendant C.C. On or about ___(date)___ executed and delivered to plaintiff a promissory note in the following words and figures: (here set out the note verbatim); (a copy of which is hereto annexed as Exhibit A) whereby defendant C.D. promised to pay to plaintiff (or order) on ___(date)___ the sum of _____ dollars with interest thereon at the rate of ____ percent per annum.

3. Defendant C.D. owes to plaintiff the amount of said note and interest.

4. Defendant C.D., On or about ___(date)___, conveyed all his property, real and personal, (or specify and describe) to defendant E.F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

WHEREFORE, plaintiff demands: (1) That plaintiff have judgment against defendant, C.D., for _____ dollars and interest; (2) that the aforesaid conveyance to defendant E.F. be declared void and the judgment herein be declared a lien on said property; and (3) that plaintiff have judgment against the defendants for costs.

Signed:_____

(Attorney for Plaintiff)

FORM Nos. 14--18, inclusive--VACANT

FORM No. 19

MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE TO STATE A CLAIM, OR LACK OF SERVICE OF PROCESS, AND LACK OF JURISDICTION UNDER RULE 12(b)

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant has not been properly served with process in this action, as appearing more clearly in the affidavits of M.N. and X.Y. hereto annexed as Exhibit A and Exhibit B, respectively.

3. To dismiss the action on the ground that the court lacks jurisdiction because _____.

Signed:_____

(Attorney for Plaintiff)

NOTICE OF MOTION

To:_____

Attorney for _____

Please take notice that the undersigned will bring the above motion on for hearing before the Court at Room _____, Guam Courthouse, Agana, Guam, on the ___(date)___, at _____o'clock in the afternoon of that day or as soon thereafter as counsel can be heard.

Signed:_____

(Attorney for _____)

FORM No. 20

ANSWER PRESENTING DEFENSES UNDER RULE 12(b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G.H. G.H. is alive and a resident of Guam, is subject to the jurisdiction of this court, can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

Third Defense

Defendant admits the allegations contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within _____ years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint. No statement of the grounds on which the court's jurisdiction depends need be made unless the counterclaim requires independent grounds of jurisdiction.)

[Cross-claim Against Defendant M.N.

(Here set forth the claim constituting a cross-claim against defendant M.N. in the manner in which a claim is pleaded in a complaint. The statement of grounds upon which the court's jurisdiction depends need not be made unless the cross-claim requires independent grounds of jurisdiction.)]

NOTE: Matter in brackets [--] included in Federal Form No. 20, but omitted in Guam Form No. 20. Guam Rules of Civil Procedure contain the same rules regarding cross-claims as do the federal rules. Therefore, the added example is included for the reader's information.

FORM No. 21

ANSWER TO COMPLAINT SET FORTH IN FORM 8, WITH COUNTERCLAIM FOR INTERPLEADER

Defense

Defendant admits the allegations contained in paragraph 1 of the complaint, and denies the allegations stated in paragraph 2 to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of _____ dollars as a deposit from E.F.

2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E.F.

3. E.F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

WHEREFORE defendant demands:

1. That the court order E.F. to be made a party defendant to respond to the complaint and to this counterclaim.

2. That the court order the plaintiff and E.F. to interplead their respective claims.

3. That the court adjudge whether the plaintiff or E.F. is entitled to the sum of money.

4. That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

5. That the court award to the defendant its costs and attorney's fees.

FORM No. 22

MOTION TO BRING IN THIRD-PARTY DEFENDANT

See Forms 22-A and 22-B.

FORM 22-A

SUMMONS AND COMPLAINT AGAINST THIRD-PARTY DEFENDANT

A.B.,	)	
Plaintiff,	)	
vs.	)	SUMMONS
C.D., Defendant & Third-party	)	
Plaintiff,	)	
vs.	)	
E.F.,	)	
	)	
Third-Party Defendant	)	

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANT:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____ and upon _____, who is attorney for C.D., defendant and third-party plaintiff, and whose address is _____ an answer to the third-party complaint which is herewith served upon you and an answer to the complaint of the plaintiff, a copy of which is herewith served upon you, within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

_____

Clerk of the Superior Court

Date: _____

COMPLAINT

1. Plaintiff A.B. has filed against defendant C.D. a complaint, a copy of which is hereto attached as Exhibit C2.

2. (Here state the grounds upon which C.D. is entitled to recover form E.F., all or part of what A.B. may recover from C.D .. The statement should be framed as an original complaint.)

WHEREFORE, C.D. demands judgment against third-party defendant E.F. for all(or part of the) sums which may be adjudges against defendant C.D. in favor of plaintiff A.B ..

Signed:_____

Attorney for C.D. Third-Party Plaintiff

FORM No. 22-B

MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E.F. a summons and third-party complaint, copies of which are attached hereto as Exhibit X.

Signed:_____

Attorney for C.D. Defendant

NOTICE OF MOTION (Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

EXHIBIT X(Contents the same as in Form 22-A)

FORM No. 23

MOTION TO INTERVENE AS DEFENDANT UNDER RULE 24

A.B., Plaintiff,	)	
	)	
vs.	)	MOTION TO INTERVENE
	)	AS A DEFENDANT
C.D., Defendant,	)	
	)	
E.F.,	)	
applicant for intervention,	)	

E.F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the ground that he is _____ (here set out the grounds upon which the motion is based, with particularity.)

Signed: _____

Attorney for E.F. Applicant for Intervention

NOTICE OF MOTION (Contents the same as in Form 19.)

INTERVENOR'S ANSWER (Contents the same as in Forms 20 and 21.)

FORM No. 24

REQUEST FOR PRODUCTION OF DOCUMENTS ETC., UNDER RULE 34

Plaintiff A. B. requests defendant C. D. to respond within _____ days to the following requests:

1. That defendant produce and permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

2. That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

(Here list the objects either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

3. That defendant permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected).

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

Signed: _____
Attorney for Plaintiff.

FORM No. 25

REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A.B. requests defendant C.D. within _____ days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.(Here list the statements.)

Signed: _____
Attorney for Plaintiff.

FORM No. 26

ALLEGATION OF REASON FOR OMITTING PARTY

When it is necessary under Rule 19(c) for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action (because he is not subject to the jurisdiction of this court); (because he cannot be made a party to this action without depriving this court of jurisdiction).

FORM No. 27 - Abrogated

FORM No. 28

NOTICE: CONDEMNATION

Government of Guam,	)	
Plaintiff	)	
v.	)	
1,000 Acres of Land in [here insert a	)	NOTICE
general location as "Village of _____"],	)	
John Doe et al., and Unknown Owners,	)	
Defendants	)	

To (here insert the names of the defendants to whom the notice is directed):

You are hereby notified that a complaint in condemnation has heretofore been filed in the office of the clerk of the Superior Court of Guam for the taking (here state the interest to be acquired, as "an estate in fee simple") for use (here state briefly the use, "as a site for a post-office building") of the following described property in which you have or claim an interest.

(Here insert brief description of the property in which the defendants, to whom the notice is directed, have or claim an interest.)

The authority for the taking is (here state briefly, as "the Act of _____, _____ Stat. _____, U.S.C., Title _____, § ___".)

You are further notified that if you desire to present any objection or defense to the taking of your property you are required to serve your answer on the plaintiff's attorney at the address herein designated within twenty days after _____.

Your answer shall identify the property in which you claim to have an interest, state the nature and extent of the interest you claim, and state all of your objections and defenses to the taking of your property. All defenses and objections not so presented are waived. And in case of your failure so to answer the complaint, judgment of condemnation of that part of the above-described property in which you have or claim an interest will be rendered.

But without answering, you may serve on the plaintiff's attorney a notice of appearance designating the property in which you claim to be interested. Thereafter you will receive notice of all proceedings affecting it. At the trial of the issue of just compensation, whether or not you have previously appeared or answered, you may present evidence as to the amount of the compensation to be paid for your property, and you may share in the distribution of the award.

Signed:_____
Attorney for Plaintiff
Dated _____

FORM No. 29

COMPLAINT: CONDEMNATION

Government of Guam,	)	
Plaintiff	)	
v.	)	
1,000 Acres of Land in [here insert a	)	COMPLAINT
general location as "Village of _____"],	)	
John Doe et al., and Unknown Owners,	)	
Defendants	)	

1. This is an action of a civil nature brought by the Government of Guam for the taking of property under the power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is (here state briefly, as "the Act of _____, _____ Stat. _____, U.S.C., Title _____, § ___").

3. The use for which the property is to be taken is (here state briefly the use, "as a site for a post-office building").

4. The interest to be acquired in the property is (here state the interest as "an estate in fee simple").

5. The property so to be taken is (here set forth a description of the property sufficient for its identification) or (described in Exhibit A hereto attached and made a part hereof).

6. The persons known to the plaintiff to have or claim an interest in the property are:

(Here set forth the names of such persons and the interests claimed.)

7. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the plaintiff and on diligent inquiry have not been ascertained. They are made parties to the action under the designation "Unknown Owners."

Wherefore the plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful

and proper.

Signed:_____
Attorney for Plaintiff

Dated _____

FORM No. 30

SUGGESTION OF DEATH UPON THE RECORD UNDER RULE 25(a)(1)

A.B. (describe as a party, or as executor, administrator, or other representative or successor of C.D., the deceased party) suggests upon the record, pursuant to Rule 25(a)(1), the death of C.D. (describe as a party) during the pendency of this action.

FORM No. 31

JUDGMENT ON JURY VERDICT

A.B., Plaintiff,	)	
	)	
vs.	)	JUDGMENT
C.D., Defendant	)	
	)	

This action came on for trial before the Court and a Jury, Honorable John Doe, Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict;

It Is Ordered and Adjudged

(That the plaintiff A.B. recover of the defendant C.D. the sum of _____ dollars with interest thereon at the rate of 6% percent per annum as provided by law, and his costs of action.)

(That the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.)

Dated:_____

_____

Clerk of the Superior Court

FORM No. 32

JUDGMENT ON DECISION BY THE COURT

A.B., Plaintiff,	)	
	)	
vs.	)	JUDGMENT
C.D., Defendant	)	
	)	

This action came for (trial) (hearing) before the Court, Honorable John Doe, Judge, presiding, and the issues having been duly (tried) (heard) and a decision having been duly rendered;

It Is Ordered and Adjudged

(That the plaintiff A.B. recover of the defendant C.D. the sum of _____ dollars, with interest thereon at the rate of 6% per annum as provided by law, and his costs of action.)

(That the plaintiff take nothing, that the action is dismissed on the merits, and that the defendant, C.D., recover of the plaintiff, A.B., his costs of action.)

Dated:_____

_____

Clerk of the Superior Court

FORM Nos. 33 -34, inclusive, VACANT

FORM No. 35

JUDICIARY OF GUAM
GUAM JUDICIAL CENTER
120 West O'Brien Drive
Hagatna, Guam 96910

APPLICATION AND CERTIFICATE FOR WAIVER OF FEES

TO: CLERK OF COURT

FROM: _____
(Name of Government Employee)

SUBJECT: **WAIVER OF FEES PURSUANT T O RULE 90, OF THE RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURT OF GUAM**

On behalf of _____, _____,
(Name of Agency) **(Division/Unit/Section)**

I hereby request the following from the Superior Court of Guam:

_____
_____
_____
_____
_____

Furthermore, I make this request for **OFFICIAL USE ONLY**.

Dated this_____day of_____, 20__.

_____
Certifying Officer
(Print Name and Sign)

/ /**APPROVED** / / **DISAPPROVED**

_____
CLERK OF COURT

LOCAL RULES OF THE SUPERIOR COURT OF GUAM

GENERAL RULES

Effective June 1, 2007

LOCAL RULES OF THE

SUPERIOR COURT OF GUAM

GENERAL RULES

Effective June 1, 2007

Rule

1.1 Title; Effective Date; Scope.

(a) Title.
(b) Effective Date; Transitional Provision.
(c) Scope of the Rules; Construction.
(d) Definitions.

2.1 Sanctions and Penalties for Noncompliance.

3.1 Stipulations.

4.1 Citation of Authority.

5.1 Formant and Filing.

(a) Form; Copy.
(b) Format.
(c) Title Page.

6.1 Continuances.

7.1 Clerk of Court.

(a) Location and Hours.
(b) Court Calendar.

8.1 Correspondence and Communications with the Court.

9.1 Files; Custody and Withdrawal.

10.1 Pretrial and Trial Publicity.

11.1 Referees.

GENERAL RULES ("GR")

GR 1.1 Title; Effective Date; Scope.

(a) Title. These are the Local Rules of the Superior Court of Guam. They may be cited as "GR (General Rules).

(b) Effective Date; Transitional Provision. These rules as adopted by Promulgation Order No. 06-006-02 apply to all actions, cases and proceedings brought after said Promulgation Order takes effect and to all actions, cases and proceedings commenced prior to the effective date hereof and still pending, except to the extent that application of the Rules to those pending actions, cases and proceedings would not be feasible, or would work injustice, in which event the prior valid Guam Rule of Court shall apply. Where justice requires, a judge may order that an action or proceeding pending before the Court prior to that date be governed by the prior practice of the Court.

(c) Scope of the Rules: Construction. These Rules supplement the Guam Rules of Civil Procedure and the Guam Rules of Criminal Procedure. These Rules shall be construed so as to be consistent with applicable statutes to promote the just, efficient and economical determination of every action and proceeding. The provisions of the General Rules and the provisions of Civil Rules 7.1 and 7.1.1 of the Local Rules of the Superior Court of Guam shall apply to all actions and proceedings, including civil, tax, and criminal, except where they may be inconsistent with rules or provisions of law specifically applicable thereto.

(d) Definitions.

(1) The word "Court" refers to the Superior Court of Guam, and not to any particular judge of the Court.

(2) The word "judge" refers to any Judge or any designated or pro tempore judge exercising jurisdiction with respect to a particular action or proceeding in said court to whom such action or proceeding has been assigned for purposes relevant to the context in which such reference occurs.

(3) The word "clerk" means the Clerk for the Superior Court of Guam and deputy clerks, unless the context otherwise requires.

GR 2.1 Sanctions and Penalties for Noncompliance.

The violation of or failure to conform to any of these General Rules, the Guam Rules of Civil Procedure, or the Local Rules of the Superior Court of Guam – Civil Rules shall subject the offending party or counsel to such penalties, including monetary sanctions and/or the imposition

of costs and attorney's fees to opposing counsel, as the Court may deem appropriate under the circumstances.

GR 3.1 Stipulations.

(a) Except as otherwise provided for in this rule, stipulations will be recognized as binding only when made in open court or filed in the case.

(b) Any stipulation requiring the judge's signature shall contain the words "Approved and So Ordered," and a blank line for the date and a designated signature line for the Judge. The Judge's signature line must appear on the same page as the signature of at least one of the attorneys entering into the stipulation.

(c) Any stipulation, which extends time or provides for a continuance shall contain the reason for the change of date; provided however that this rule shall not be applicable to a written stipulation or other written agreement entered into between the parties regarding an answer or reply to any pleading or to any responses to any discovery requests other than a date set in a court order.

GR 4.1 Citation of Authority.

(a) Parties shall provide this Court with a copy of any case or other authority which they cite or rely upon and which is unavailable in either the Guam Law Library or from a generally recognized legal research database.

(b) All citations shall be in the form found in the most recent edition of A Uniform System of Citation identifying the court cited, and enabling both the Court and opposing counsel to locate the cited work.

GR 5.1 Format and Filing.

(a) Form; Copy. All papers presented for filing shall be on white opaque paper of good quality, eight and one-half inches by eleven inches (8 ½ x 11) in size, and shall be flat, unfolded (except where necessary for the presentation of exhibits), without back or cover and shall comply with all other applicable provisions of these Rules. All pages shall be numbered consecutively at the bottom and firmly bound at the upper left-hand corner. In addition to the original, a legible conformed copy of all documents, except certificates of service, summons, subpoenas and notices of depositions, shall be filed for the judge's use. Matter shall be presented by typewriting, printing, or other clearly legible reproduction process, and shall appear on one side of each sheet only. All papers shall be double-spaced with a minimum of 12 point font, except for the identification of counsel, title of the case, footnotes, quotations, and exhibits.

(b) Format. The title of the Court shall be centered and commence not less than three (3) inches from the top of the page.

(c) Title Page. The first page of every document shall contain the following information, which may be single spaced:

(1) The name, address and telephone number of the attorney appearing for a party in an action or individual appearing pro se and for whom the attorney appears shall be printed or typewritten in the upper left-hand corner. The space to the right of the page's center shall be reserved for the clerk's filing stamp.

(2) Below and to the left of the title of the Court, the title of the action or proceeding shall be inserted. In a complaint, the title of the proceeding shall contain the names of all parties and in the event that the parties are too numerous for all to be named on the first page, the names of the parties may be carried onto successive page(s). In all papers other than a complaint, the title of the proceeding may be appropriately abbreviated.

(3) In the space to the right of the title of the action, the following shall appear:

(A) the file number of the action or proceeding;

(B) a designation of the action or proceeding as civil, criminal, domestic, probate, juvenile, special proceedings, land registration, adoption, child support, protective order;

(C) a brief description of the nature of the document; and

(D) mention of any notice of motion or affidavits or memorandum in support.

(4) Cover Sheets. All documents initiating any proceedings shall be accompanied by the appropriate cover sheet, which shall be fully completed and executed. Cover sheets are available upon request at the Clerk's Office. Persons in the custody of state, local, commonwealth or federal institutions are exempt from the requirements of this subdivision.

(d) Typed Names Below Signature Lines. Names shall be typed below signatures on all pleadings and documents filed.

GR 6.1 Continuances.

Except as otherwise provided for in these Rules, no continuance shall be granted merely on the stipulation of the parties. If the Court is satisfied that counsel are preparing the case with diligence and additional time is required to comply with these Rules, the parties may move the Court to extend the dates for the obligations imposed under these Rules, upon submission of a timely stipulated motion signed by all counsel setting forth the reasons for the requested continuance. No continuance will be granted unless the stipulation has been lodged before the date upon which the act was to have been completed under this Rule.

GR 7.1 Clerk of Court.

(a) Location and Hours. The Office of the Clerk of this Court shall be located at Guam Judicial Center, 120 West O'Brien Drive, in Hagåtña, Guam. The mailing address is 120 West O'Brien Drive, Hagåtña, Guam 96910-5174. The regular hours shall be from 8:00 a.m. to 5:00 p.m. each day except Saturdays, Sundays, legal holidays and other days or at times so ordered by the Court. Nothing in this Rule precludes the filing of papers as provided in Rule 77, Guam Rules of Civil Procedure.

(b) Court Calendar. Daily before 5:00 p.m., the clerk shall post on the bulletin board of the Superior Court, copies of the court's calendar for the following day. The Clerk shall cause the calendar to appear on the website daily. The website address is www.guamcourts.org.

GR 8.1 Correspondence and Communications with the Court.

(a) No one shall directly or indirectly communicate with a judge or judicial officer, the Judge's chamber personnel (including law clerk), the clerk of court, or the clerk's deputies and assistants about any matter pending with the court except:

1) In open court; or
2) With the consent of all other counsel in such matter; or
3) In the presence of all other counsel in such matter; or
4) By means of petitions, motions or other papers provided for or allowed by rule of law; or
5) Matters of calendaring.

(b) Nothing in this Rule shall prevent the Clerk of Court from entertaining questions or complaints.

(c) The practice of writing a letter to a judge (even when other counsel recieve copies of such letter) is expressly prohibited.

GR 9.1 Files; Custody and Withdrawal.

All files of the court shall remain in the custody of the clerk and no record or paper belonging to the files of the court shall be taken from the custody of the clerk without a special order of a judge and a proper receipt signed by the person obtaining the record or paper. No such order will be made except in extraordinary circumstances.

GR 10.1 Pretrial and Trial Publicity.

(a) The use of cameras in a courtroom shall be governed by the provisions of 8 GCA § 1.23 and the regulations adopted pursuant to that section.

(b) Publicity. The Court personnel, including but not limited to marshals, clerks and deputies, law clerks, secretaries, messengers, interpreters and court reporters, shall not disclose to any

person information relating to any pending proceeding that is not part of the public records of the Court without specific authorization of the Court.

(c) Officers of this Court. In making statements to the media, the Officers of the Court are bound by the Rules of Professional Conduct as amended from time to time.

GR 11.1 Referees.

The term *judge* when used in these rules also includes referee.

LOCAL RULES OF THE SUPERIOR COURT OF GUAM

CIVIL RULES

Effective June 1, 2007

LOCAL RULES OF THE

SUPERIOR COURT OF GUAM

CIVIL RULES

Effective June 1, 2007

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CVR 1.1 Scope.

The provisions of the Civil Rules (hereinafter "CVR") shall apply to all civil actions, domestic actions, special proceedings, and other proceedings not including criminal and juvenile, except where they may be inconsistent with rules or provisions of law specifically applicable thereto.

CVR 4.1 Summons and Complaint.

The issuance of a summons and the service of a summons and complaint are governed by Rule (4) of the Guam Rules of Civil Procedure.

CVR 5.1 Service and Filing of Other Documents Subsequent to Complaint.

All documents after the complaint required to be served and filed pursuant to Rule 5 of the Guam Rules of Civil Procedure shall be **(1)** served on all parties to the action in accordance with GRCP Rule 5; and **(2)** filed with the Court either before service or within a reasonable time after service.

CVR 5.2 Representation of Service.

When a member of the Bar of this Court applies to the clerk for the entry of a default, or of a default judgment, or for the certification of the record on appeal, or applies to the Court for an order or judgment, such application is a representation that due service has been made of all pleadings or papers required by the Guam Rules of Civil Procedure to be made a condition to the relief sought, and for which no acknowledgment or affidavit of service is on file. No other proof of service is required unless an adverse party raises a question of due notice.

CVR 6.1 Time Computation.

Guam Rule of Civil Procedure 6(a) controls the manner for computing any period of time prescribed or allowed by these Rules.

CVR 7.1 Motion Practice.

(a) Applicability. The provisions of this Rule shall apply to motions, applications, petitions, orders to show cause, and all other proceedings except a trial on the merits and applications for a temporary restraining order, unless otherwise ordered by the Court or provided by statute, the Guam Rules of Civil Procedure or the Local Rules of the Superior Court of Guam.

(b) Service of Motion and Accompanying Papers. Every motion shall be presented in writing. The moving party must present a motion, which will contain the date on which the motion will be heard, as provided for in CVR Rule 7.1(e)(2). The motion papers shall be served on each of the parties in accordance with Guam Rule of Civil Procedure 5(b) and filed with the clerk not

later than twenty-one (21) days prior to the day on which oral argument is scheduled, unless the Court orders a shorter time.

(c) Moving Papers. There shall be served and filed with the motion:

(1) a memorandum in support thereof containing the points and authorities upon which the moving party relies, including citations; and

(2) any affidavits or declarations under penalty of perjury sufficient to support any material factual contentions permitted by the Guam Rules of Civil Procedure.

(d) Opposition and Reply.

(1) The opposing party shall, not less than fourteen (14) days preceding the noticed date of oral argument, serve upon all parties and file with the clerk:

(A) a memorandum in support thereof containing the points and authorities upon which the opposing party relies;

(B) if desired, the evidence upon which the opposing party relies;

(C) any affidavits or declarations permitted by the Guam Rules of Civil Procedure.

(2) The moving party may, not more than seven (7) calendar days preceding the noticed date of oral argument, serve and file a reply to the opposing party's opposition.

(e) Oral Argument.

(1) Oral Argument Not Automatic. Oral argument may be denied in the discretion of the judge, except where oral argument is required by statute or the Guam Rules of Civil Procedure.

(2) Request For Oral Argument; Agreement of Oral Argument Date. Counsel for the parties must file an **"Agreement of Hearing Date,"** in a form shown below in **Attachment "CVR 7.1A."** It shall be the responsibility of the moving party or his attorney to contact the attorney for each party who has entered an appearance, or if the party(ies) are pro se, it is the moving party's responsibility to contact the pro se party and propose a date for oral argument. Once the parties have agreed on a date for oral argument, the moving party shall clear the date with the chambers clerk. When the date has been cleared with the clerk, that date shall be inserted in the "Agreement of Hearing Date." If the parties do not agree on a date for oral argument or if a party has not entered an appearance, the moving party may submit the "Agreement of Hearing Date" to the Court with a notation that the non-moving party does not agree or is not available, in

which event the Court shall either determine the hearing date or determine that no oral argument shall be scheduled and the motion shall proceed to briefing and disposition under CVR 7.1(e)(4), in the Court's discretion.

(3) Court's Cancellation of Oral Argument. Any oral argument may be taken off calendar by Order of the Court, in the discretion of the Court, and a decision rendered on the basis of the written materials on file.

(4) Oral Argument Taken Off Calendar by the Court. In cases where the Court cancels oral argument, as referred to in subsection (3) above, the Opposition is due to be served on the opposing party(ies) and filed with the Court fourteen (14) days prior to the originally scheduled date of oral argument, and the reply shall be served and filed seven (7) calendar days prior to the originally scheduled day of oral argument.

(f) Failure to File Required Papers. Papers not timely filed by a party including any memoranda or other papers required to be filed under this Rule shall not be considered without leave of court.

(g) Length of Briefs and Memoranda. Each party may submit briefs or memoranda in support of or in opposition to any pending motion which shall not exceed a total of twenty (20) pages in length without leave of Court to file additional pages. The moving party may submit a reply brief or memoranda not in excess of ten (10) pages without leave of court. All briefs and memoranda in excess of fifteen (15) pages shall contain a table of authorities cited.

(h) Advance Notice of Withdrawal or Non-Opposition; Continuances.

(1) Any moving party who does not intend to press the motion or who intends to withdraw before the hearing date, any opposing party who does not intend to oppose the motion, and any party who intends to move for a continuance of the hearing of a motion shall, not later than five (5) working days preceding the oral argument date, notify opposing counsel and the court clerk in writing.

(2) Absent good cause shown, a deadline fixed by these rules and the "Agreement of Hearing Date" will not be extended.

(i) Motion for Reconsideration. A motion for reconsideration of the decision on any motion may be made only in accordance with the Guam Rules of Civil Procedures.

No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

(j) Orders Shortening Time. Applications for orders shortening the time permitted or required by these Civil Rules of Court or the Guam Rules of Civil Procedure for the filing of any paper or pleading or the doing of any act shall be supported by a declaration stating the reasons therefor.

When the application is made ex parte, the declaration shall state the reasons why a stipulation could not be obtained or notice could not be given.

(k) Sanctions. The Court need not consider motions, oppositions to motions or briefs or memoranda that do not comply with this Rule. The presentation to the Court of frivolous motions or oppositions to motions or the failure to comply fully with this Rule subjects the offender at the discretion of the Court to the sanctions of General Rule 2.1.

7.1.1 Ex Parte Applications. All applications for ex parte orders shall be heard by the judge assigned to the case unless the judge is unavailable. All other applications for ex parte orders shall be filed by 10:00 AM to be heard at 1:30 PM by the judge designated by the presiding judge as the ex parte judge, unless the ex parte judge in his or her discretion decides otherwise. Applications for ex parte orders shall be accompanied by a memorandum containing the name of counsel for the opposing party, if known, the reasons for the seeking of an ex parte order, and points and authorities in support thereof. There shall also be attached, within a separate cover, the proposed ex parte order. The proposed order shall bear the signature of the attorney presenting it preceded by the words, "presented by" on the left side of the last page.

(a) Declaration of Counsel It shall be the duty of the attorney so applying to file a declaration containing the following:

> **(1)** that a good faith effort has been made to advise counsel for all other parties, if known, or the parties themselves, if counsel is not known, of the date, time and substance of the proposed ex parte application or the reasons supporting the claim that notice should not be required, and
>
> **(2)** the efforts to contact other counsel or the parties and whether any other counsel or party, after such advice, opposes the application or has requested to be present when the application is presented to the court, and if not filed in accordance with subsection (j) of this rule, reasons why the ex parte application has not been timely filed.

(b) Waiver of Notice. If the judge to whom the application is made finds that the interests of justice require that the ex parte application be heard without notice, the judge may waive the notice requirement of subpart (1) of this section.

CVR 10.1 Jurisdiction.

Each complaint, petition, counter-claim and cross-claim shall state in a separate paragraph entitled "jurisdiction" the statutory or other basis for jurisdiction and the facts supporting jurisdiction.

CVR 10.2 Format and Filing.

See General Rule 5.1.

CVR 15.1 Amended Pleadings.

Any party filing or moving to file an amended pleading shall reproduce the entire pleading as amended and may not incorporate any part of a prior pleading by reference except with leave of court.

CVR 16.1 Scheduling Order and Discovery Plan.

(a) Applicability. Unless otherwise ordered, this Rule is applicable to all civil cases pending in the Superior Court of Guam except for the cases exempted by CVR 16.1(b). Counsel are expected to meet and confer as required by Rule 26(f) of the Guam Rules of Civil Procedure and Civil Rule 16.2, prior to commencing discovery, unless the Court orders otherwise. Counsel are expected to complete pretrial discovery in the shortest time reasonably possible with the least expense.

(b) Exempt Actions.

(1) The following cases are exempt from compliance with these procedures unless otherwise ordered by the Court:

(A) an action for review on an administrative record;

(B) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;

(C) an action brought without counsel by a person in custody of the United States, a state, territory or a subdivision thereof;

(D) an action to enforce or quash an administrative summons or subpoena;

(E) a proceeding ancillary to proceedings in other courts;

(F) an action to enforce an arbitration award;

(G) a petition for adoption or termination of parental rights;

(H) a proceeding for adult commitment for mental health services;

(I) a petition for annulment;

(J) an action for child support;

(K) an action for collection of money which is uncontested or a default;

(L) an action for divorce uncontested or a default;

(M) a petition for guardian ad litem/settlement for juvenile;

(N) a petition for guardianship of an adult;

(O) a petition for guardianship of a juvenile;

(P) a petition for juvenile (PINS, BC, Drug Court, Delinquency);

(Q) an order to show cause for a name change;

(R) a petition for probate;

(S) an action for a protective order or protective injunction; and

(T) proceedings for writs.

(2) Notwithstanding the exemptions set forth herein, a party may request the court to exempt them from the requirements of this rule under appropriate circumstances or for good cause shown.

(c) Meeting of Parties, Scheduling Order, Discovery Plan, Status Report and Scheduling Conference.

(1) Meeting of Parties. All parties are directed to confer in accordance with Civil Rule 16.2 and Rule 26(f) of the Guam Rules of Civil Procedure and provide the Court with a Scheduling Order and separate Discovery Plan within seventy-five (75) days of the date of the filing of the complaint. The Scheduling Order shall be in substantially the same form as **Attachment "CVR 16.1A"** and the Discovery Plan shall be drafted in accordance with subsection (d) hereof.

(2) Initial Communication of Parties. It is the responsibility of plaintiff's counsel to initiate the communication necessary to prepare the Scheduling Order. In the event that the plaintiff is proceeding pro se, the defendant shall contact the plaintiff and arrange a meeting to comply with this Rule in the appropriate time frame.

(3) Time Limits - Scheduling Notice, Order and Conference and Discovery Plan. The clerk of Court will schedule a Scheduling Conference to be held within ninety (90) days after the complaint is filed. The clerk shall serve, no later than forty (40) days after the complaint has been filed, a Scheduling Notice in the form set forth in **Attachment "CVR 16.1B"** setting forth

(A) the date on which the Scheduling Order and Discovery Plan shall be filed by the parties, and

(B) the date for the Scheduling Conference.

It is the responsibility of plaintiff's counsel or the pro se plaintiff to serve a copy of the clerk's Scheduling Notice on all parties who may appear after the clerk's issuance of the Notice of Scheduling Conference.

(4) Contents of Scheduling Order.

The Scheduling Order to be submitted by the parties shall contain the following information:

(A) The nature of the case;

(B) The posture of the case including hearings, motions and discovery;

(C) (If the parties agree to the contents of the Discovery Plan as referred to in CVR 16.2 infra): the adoption and incorporation of the attached Discovery Plan as part of the Scheduling Order, **OR**

(D) (If the parties do not agree to the contents of the Discovery Plan referred to in CVR 16.2 infra):

(i) any modifications of the time for disclosures under Rules 26(a) and 26(e)(1) of the Guam Rules of Civil Procedure;

(ii) a description and schedule of all pretrial discovery each party intends to initiate prior to the close of discovery;

(E) The following dates:

(i) a proposed date limiting the joinder of parties and claims;

(ii) a proposed date limiting the filing of motions to amend the pleadings;

(iii) the assigned date for the required Scheduling Conference with the Judge;

(iv) discovery cut-off dates (defined as the last day to file responses to discovery and to complete depositions);

(v) discovery and dispositive motion cut-off dates (the last day to file motions);

(vi) pretrial conference dates;

(vii) dates for filing the trial brief, exhibit lists, and witness lists, and

(viii) the trial date, and in no event shall the trial date be later than eighteen (18) months after the complaint is filed, unless the Court otherwise allows;

(F) The prospects for settlement;

(G) Whether the trial is jury or non-jury;

(H) The number of trial days required;

(I) The names of trial counsel;

(J) Whether the parties desire to submit the case early in the litigation to a settlement conference or engage in alternative dispute resolution;

(K) Suggestions for shortening trial; and

(L) Any other issues affecting the status or management of the case.

(d) **Contents of Discovery Plan**. The Proposed Discovery Plan shall contain a description, including a schedule, of all pretrial discovery each party intends to initiate prior to the close of discovery, including time and length of discoverable events. The plan shall conform to the obligation to limit discovery under Rule 26(b) of the Guam Rules of Civil Procedure and shall address all matters set forth in Rule 26(f) of the Guam Rules of Civil Procedure.

(e) **Non-Appearance of Defendants - Status Report**. If on the due date of the Scheduling Order and Discovery Plan, the defendant(s) or respondent(s) have been served and no answer or appearance has been filed, or if service on the defendants has not been effected, counsel for the plaintiff or the pro se plaintiff shall file an independent status report setting forth the above information required in subsections A through L to the extent possible. The report shall also include the current status of the non-appearing parties.

In addition, if service has not been effected, plaintiff's counsel or the pro se plaintiff must set forth the reasons why service has not been effected and what attempts at service have been made.

CVR 16.2 Meeting of Counsel and Preparation of Proposed Scheduling Order and Discovery Plan.

(a) Meeting of Counsel or Pro Se Litigants. Within fifteen (15) days after the receipt of the clerk's Scheduling Notice, but no later than sixty (60) days after the filing of the complaint, counsel of record and all pro se litigants shall meet in person for the purposes set forth below:

(1) Documents - To exchange all documents then reasonably available to a party which are contemplated to be used in support of the allegations of the pleading filed by the party. Documents later shown to be reasonably available to a party and not exchanged may be subject to exclusion at the time of trial.

(2) Discovery - To exchange preliminary schedules of discovery; to arrange for the disclosures required by CVR 26.2 and Rule 26(a) of the Guam Rules of Civil Procedure; and to discuss all items set forth in Rule 26(f) of the Guam Rules of Civil Procedure.

(3) Other Evidence - To exchange any other evidence then reasonably available to a party to obviate the filing of unnecessary discovery motions.

(4) List of Witnesses - To exchange a list of witnesses then known to have knowledge of the facts supporting the material allegations of the pleading filed by the party. The parties will then be under a continuing obligation to advise the opposing party of other witnesses as they may become known.

(5) Settlement - To discuss settlement of the action.

(6) Complicated Cases - To discuss whether the action is sufficiently complicated so that special procedures need to be adopted to facilitate the management of this action.

(7) Proposed Scheduling Order - To discuss the contents and preparation of the Proposed Scheduling Order.

(8) Proposed Discovery Plan - To discuss the contents and preparation of the Proposed Discovery Plan.

(b) Preparation of the Proposed Scheduling Order. After the meeting of counsel referred to in CVR 16.2(a) above, plaintiff's counsel, or if plaintiff is pro se, the plaintiff, shall prepare a draft of the proposed Scheduling Order required by this Rule. Plaintiff's draft shall be presented to all parties for amendments and modifications. If all parties do not agree on a proposed Scheduling Order, the parties shall sign and file, on the date that the Scheduling Order is due, a mutual statement re: Disagreement of Scheduling Order, stating that the parties have been unable to agree despite good faith efforts to do so. To this statement shall be attached each party's Proposed Scheduling Order. If a party disagrees but does not attach a Proposed Scheduling Order, that party will be considered to have not taken a position with respect to the dates and matters contained therein.

(c) Preparation of the Proposed Discovery Plan. After the meeting of counsel referred to in CVR 16.2(a) above, the attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for submitting to the Court a Proposed Discovery Plan required by this Rule. Areas of disagreement with respect to discovery shall be included and denoted as such in the Discovery Plan.

(d) Scheduling Conference and Order. All matters required to be taken care of by the Scheduling Order and Discovery Plan will be addressed at the Scheduling Conference, after which the final Scheduling Order will be entered.

CVR 16.3 Failure to Cooperate - Sanctions.

The failure of a party or a party's counsel to participate in good faith in the framing of the proposed Scheduling Order and Discovery Plan required by this Rule, and Rules 16(b) and 26(f) of the Guam Rules of Civil Procedure may result in the imposition of appropriate sanctions. See General Rule 2.1 and Rules 16(f) and 37(g), Guam Rules of Civil Procedure.

CVR 16.4 Filing of Motions Does Not Excuse Counsel from the Requirements of this Rule.

Absent an order of the court to the contrary, the filing of a motion, including a discovery motion, motion for summary judgment, or a motion to dismiss, will not excuse the parties from complying with this Rule and any Scheduling Order entered in the case.

CVR 16.5 Extension of Deadlines Fixed in Scheduling Order.

(a) The chamber clerk for the assigned judge shall grant an oral request for a single extension of time of one deadline fixed in the scheduling order of no more than 14 days provided that such extension shall not apply to pre-trial conference or trial dates. Such extensions may be applied for and granted by telephone. The grant of the extension shall be entered on the court docket and if a new Scheduling Order is necessary to reflect an extension of a deadline other than that requested, the judge shall issue a new Scheduling Order. Application for such extension shall be conditioned upon prior notice to the opposing party. The grant of the extension of time under this rule will bar any further motion to extend a deadline established by a Scheduling Order unless such a motion, which must be in writing, demonstrates extraordinary and compelling circumstances.

(b) Except as otherwise provided by subsection (a) of this rule, a deadline established by a Scheduling Order may be extended only upon a good cause finding by the Court. In the absence of disabling circumstances, the deadline for completion of all discovery will not be extended unless there has been active discovery. Delayed discovery will not justify an extension of discovery deadlines. A motion to extend the deadline in a Scheduling Order must demonstrate a specific need for the requested extension, and should be accompanied by a detailed proposed amendment to the previously entered Scheduling Order. The date for completion of discovery will be extended only if the remaining discovery is specifically described and scheduled, e.g., the

names of each remaining deponent and the date, time and place of each remaining deposition. The Court, in its discretion, may order that the client consent in writing to any continuance proposed by counsel.

[Committee note: Subpart (a) patterned after Ninth Circuit Rule 31-2].

CVR 16.6 Settlement Conference.

(a) At any time after an action or proceeding has been filed, any party may file a request for a settlement conference. Such conference may be held before the assigned judge or another judge. If the conference is held before the judge trying the case, a written stipulation of all counsel shall be necessary prior to the settlement conference and the assigned judge must agree to conduct the settlement conference. Each party attending such a conference shall be represented by counsel authorized to participate in settlement negotiations. The Court may require, by Order issued prior to the settlement conference, the client or its authorized representative to personally attend the conference. Unless otherwise ordered by the court, the filing of a request for settlement conference shall not extend or suspend the dates set in the scheduling order.

(b) Each party appearing at all conferences shall have full authority with respect to all matters on the agenda, including settlement of the action or proceeding.

(c) When the party files its request for settlement conference, if the assigned judge declines then the presiding judge shall assign another judge to conduct the settlement conference. Settlement judges shall be assigned on a rotating basis.

CVR 26.1 Discovery Documents - Nonfiling and Disclosure.

(a) Nonfiling of Discovery Documents and Proof of Service. The following discovery documents and proofs of service thereof shall not be filed with the clerk until there is a proceeding in which the document or proof of service is in issue:

(1) Transcripts of depositions upon oral examination;

(2) Transcripts of depositions upon written questions;

(3) Interrogatories;

(4) Answers or objections to interrogatories;

(5) Requests for the production of documents or to inspect tangible things;

(6) Responses or objections to requests for the production of documents or to inspect tangible things;

(7) Requests for admission;

(8) Responses or objections to requests for admission; and

(9) Disclosures made under GRCP 26 and CVR 26.2.

When required in a proceeding, only that part of the document which is in issue shall be filed. All such discovery documents shall be held by the attorney pending use pursuant to this Rule for the period specified in Civil Rule 79.1 for the retention of exhibits, unless otherwise ordered by the Court.

(b) **Discovery Documents - Disclosure**. During the pendency of any civil proceeding, any person may, after written notice is served on all parties to the action, obtain a copy of any deposition or discovery document not on file with the Court upon payment of the expense of the copy and upon

(1) approval by the clerk, if no objection is filed with the clerk by any party to the action within five (5) days after service of such written notice, or

(2) leave of Court, if an objection is filed with the clerk by any party to the action within five (5) days after service of such written notice.

CVR 26.2 – Required Disclosure

The general provisions governed by discovery and the duty of disclosure are set forth in GRCP 26.

a. A lawyer shall not use any form of discovery, or the scheduling of discovery, as a means of unduly harassing opposing counsel or his or her client.
b. Requests for production shall not be excessive or designed solely to place a burden on the opposing party.
c. Lawyers shall, when practical, consult with opposing counsel before scheduling hearings and depositions, in a good faith attempt to avoid scheduling conflicts.
d. When scheduling hearings and depositions, lawyers shall communicate with opposing counsel in an attempt to schedule them at a mutually agreeable time.

If a request is made to schedule a hearing or deposition, the lawyer to whom the request is made shall confirm that the time is available or advise of a conflict within a reasonable time and suggest an alternate time for the hearing or deposition

CVR 30.1 Depositions.

(a) Depositions - Original. The original transcript of a deposition shall, unless otherwise stipulated to on the record at the deposition, after signing and correction, or waiver of the same, be sent to the attorney noticing the deposition.

CVR 33.1 Interrogatories and Requests for Admission.

(a) Limitation on Number of Interrogatories and Requests for Admission. No party shall serve more than one set of interrogatories or requests for admission on any other party without leave of court. Interrogatories or requests for admission shall not exceed fifty (50) in number, counting any subparts or subquestions as individual questions. Subparts or subquestions of any interrogatory shall relate directly to the subject matter of the interrogatory. Any party desiring to serve additional interrogatories shall submit to the Court a written memorandum setting forth the proposed additional interrogatories or requests for admission and the reasons establishing good cause for their use.

(b) Answers and Objections to Interrogatories and Requests for Admission. The party answering or objecting to interrogatories or requests for admission shall quote each interrogatory or request in full immediately preceding the statement of any answer or objection thereto. Upon request the propounding party shall make reasonable efforts to provide the party answering or objecting to interrogatories or requests for admission with the text of each interrogatory or request in electronic format.

(c) Interrogatories, Requests for Admission and Requests for Production of Documents - Original. The original of the interrogatories, requests for admission or requests for the production of documents or to inspect tangible things served on the opposing party shall be held by the attorney propounding the interrogatories or requests pending use. (See CVR 26.1(a).)

CVR 36.1 Requests for Admission.

See CVR 33.1.

CVR 37.1 Discovery Motions.

(a) Prior to the filing of any motion relating to a discovery dispute, counsel for the parties shall meet or attempt to meet in a good faith effort to eliminate the necessity for hearing the motion or to eliminate as many of the disputes as possible. It shall be the responsibility of counsel for the moving party to arrange for the conference which shall be held within a reasonable time.

(b) If counsel are unable to settle their differences, they shall formulate a written stipulation specifying separately and with particularity each issue that remains to be determined at the hearing.

By way of example only, if the sufficiency of an answer to an interrogatory is in issue, the stipulation shall contain verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated. The stipulation shall be served and filed with the notice of motion. In the absence of such stipulation, or a declaration of counsel of non-cooperation by the opposing party, the Court will not consider any discovery motion unless otherwise ordered upon good cause shown.

(c) Briefing and oral argument of all discovery motions shall be scheduled pursuant to CVR 7.1.

(d) If the discovery disputes are found to be frivolous or based on counsel's failure to cooperate with each other in good faith, sanctions will be imposed at the discretion of the Court.

CVR 41.1 Call of the Docket - Status Hearings.

Status hearings shall be scheduled by the clerk in all cases pending with no action taken in the preceding six (6) months. Notice shall be given in writing to each attorney of record in every case to be called, stating the date and time for such hearing. If good and sufficient reasons are not presented by counsel for failure to have taken appropriate action in any such case, the Court may dismiss the action or enter such other order as may be proper.

CVR 51.1 Proposed Jury Instructions, Voir Dire Questions and Verdict Forms.

In jury cases, the parties shall not less than fourteen (14) calendar days prior to the date on which the trial is scheduled to commence, serve and lodge proposed voir dire questions, if desired, and proposed jury instructions and verdict forms.

CVR 52.1 Proposed Findings of Fact and Conclusions of Law.

In non-jury cases, if ordered by the Court, the parties shall not less than fourteen (14) calendar days prior to the date on which the trial is scheduled to commence, serve and lodge proposed findings of fact and conclusions of law.

CVR 54.1 Taxation of Costs.

(a) Application to the Clerk. Within thirty (30) days after the entry of a judgment allowing costs the prevailing party shall serve on the attorney for the adverse party and file with the clerk an application for the taxation of costs. The application shall be on a Bill of Costs form which shall be furnished by the Clerk of Court upon request. If an application for costs is received which is not on the appropriate form, the clerk shall promptly notify the party seeking costs, shall forward the correct form, and shall extend the time for filing the amended claim for a period not to exceed ten (10) days. The application shall contain an itemized schedule of the costs in a sworn statement signed by the attorney for the applicant that the schedule is correct, that the costs were necessarily incurred in the case, and that the services for which fees have been charged were actually and necessarily performed. The application shall be heard by the Clerk not

less than eleven (11) nor more than sixteen (16) days after it is served, and written notice of the time of hearing shall be given to all parties by the Clerk of Court.

A failure to comply with this Rule waives the right to recover all costs, other than the clerk's costs, which may be inserted in the judgment without application. At the option of the Clerk, the hearing may be held by telephone conference call.

(b) Items Taxable As Costs.

(1) Filing fees - The clerk's filing fees.

(2) Fees for Service of Process - Fees for service of process (whether served by the Marshal or other persons authorized by Rule 4, Guam Rules of Civil Procedure.)

(3) Marshal's Fees – Other fees and charges paid to the Marshal pursuant to Guam law.

(4) Reporter's Transcripts - The cost of the original and one copy of all or any part of a trial transcript, daily transcript or a transcript of matters occurring before or after trial, if requested by the Court or prepared pursuant to stipulation.

(5) Depositions - Costs incurred in connection with taking depositions, including:

(A) the cost of the original and one copy of all depositions (including video taped depositions) necessarily obtained for use in the case;

(B) if both video and stenographic depositions are taken, they both shall be allowed as costs if the video deposition is used at trial. If only the stenographic version is used at trial, the video shall not be allowed as a cost. If neither is used at trial, the cost of the less expensive deposition will be allowed so long as the deposition would have been recoverable. The cost of ASCII disks is recoverable.

(C) the reasonable fees of the deposition reporter, the notary, and any other persons required to report or transcribe depositions which were necessarily obtained for use in the case;

(D) reasonable witness fees paid to a deponent, including fees actually paid to an expert witness deponent pursuant to Rule 26(b)(4)(C), Guam Rules of Civil Procedure.

(E) reasonable fees paid to an interpreter when necessary to the taking of the deposition; and

(F) the cost of copying or reproducing exhibits used at the deposition and made a part of the deposition transcript.

(6) **Witness Fees** - Fees paid to witnesses, including:

(A) per diem, mileage, subsistence and attendance fees paid to witnesses subpoenaed and/or actually attending the proceeding;

(B) witness fees for a party if required to attend by opposing party; and

(C) witness fees for officers and employees of a corporation if they are not parties in their individual capacities.

(7) **Interpreter's and Translator's Fees** - Fees paid to interpreters and translators, including:

(A) The salaries, fees, expenses and costs of an interpreter; and,

(B) Fees for translation of documents received in evidence, used as part of the proceeding or when otherwise reasonably necessary to the preparation of the case.

(8) **Docket Fees** – The cost of generating a copy of the docket sheet or clerk's record.

(9) **Masters, Commissioners, and Receivers** - The reasonable fees and expenses of masters, commissioners, and receivers.

(10) **Certification, Exemplification and Reproduction of Documents** - Document preparation costs for documents necessarily obtained for use in the case, including:

(A) the cost of copies of an exhibit attached to a document necessarily served and filed;

(B) the cost of copies of documents admitted into evidence when the original is not available or the copy is substituted for the original at the request of an opposing party;

(C) fees for an official certification of proof respecting the non-existence of a document or record;

(D) notary fees incurred in notarizing a document when the cost of the document is taxable; and

(E) fees for necessary copies and necessary certification or exemplification of any documents.

(11) Premiums on Undertakings and Bonds - Premiums paid on undertakings, bonds, security stipulations, or substitutes therefor where required by law, court order, or where necessary to enable a party to secure a right granted in the proceeding.

(12) Other Costs - Upon order of the Court, the following items may be taxed as costs:

(A) summaries, computations, polls, surveys, statistical comparisons, maps, charts, diagrams and other visual aids reasonably necessary to assist the jury or the Court in understanding the issues at the trial;

(B) photographs, if admitted in evidence or attached to documents necessarily served upon the opposing party and filed; and

(C) the cost of models if ordered by the Court in advance of or during trial.

(13) Costs on Appeal - Costs on appeal taxable in the Superior Court shall be governed by GRAP 22(e). Such costs bill is to be filed within fifteen (15) days of the filing and spreading of the mandate of the Supreme Court of Guam.

(14) Items of Costs Not Specifically Mentioned in This Rule shall be taxed by the Clerk in accordance with the laws of Guam.

(c) Objections to Bill of Costs - Response. Any party may file and serve written objections to any item specified in a Bill of Costs. The grounds for objections shall be specifically stated. The objections shall be served and filed no later than five (5) days before the date noticed for the hearing. A written response may be served and filed no later than three (3) days before the date noticed for the hearing.

(d) Clerk's Determination - Finality. After considering any objections to the Bill of Costs and any responses thereto, the Clerk shall tax costs to be included in the judgment. The Clerk's determination shall be final unless modified by the Court upon review pursuant to subsection (e) hereof.

(e) Review of Clerk's Determination. A dissatisfied party may appeal to this Court upon written motion served within five (5) days of the Clerk's decision, as provided in GRCP Rule 54(d). The motion shall specify all objections to the Clerk's decision and the reasons for the objections. Appeals shall be heard upon the same papers and evidence submitted to the Clerk.

(f) Clerk's Duty. As soon as practicable after the taxation of costs becomes final, the Clerk shall insert the amount of costs taxed into the blank left in the taxation of costs form and the judgment, and shall enter a similar notation on the docket sheet.

(g) Writ of Execution for Costs. The clerk shall, upon request, issue a writ of execution to recover costs or attorney's fees included in the judgment:

(1) Upon presentation of a certified copy of the final judgment in the Superior Court; or

(2) Upon presentation of a mandate of the Supreme Court of Guam to recover costs taxed by the Supreme Court.

CVR 54.2 Sanctions for Late Notification of Settlement, Postponement or Other Disposition of Civil Jury Trial.

Whenever any civil action scheduled for jury trial is required to be postponed, or settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs shall be assessed equally against the parties and their counsel or otherwise assessed as directed by the Court, unless the Court and the Clerk's Office are notified at least one full business day prior to the day on which the action is scheduled for trial.

CVR 54.3 Filing Date for Attorney's Fees.

Any motion or application for attorney's fees shall be served and filed within fourteen (14) days after the entry of judgment or other final order, unless otherwise ordered by the Court. Such motions and their disposition shall be governed by CVR 7.1 and Rule 54(d)(2) of the Guam Rules of Civil Procedure.

CVR 58.1 Judgments.

(a) Judgment. The Judgment shall be set forth on a separate document as required by Rule 58, Guam Rules of Civil Procedure. The Judgment shall follow, as nearly as possible, Guam Rules of Civil Procedure Official Forms No. 31 or No. 32.

(b) Entry of Judgments and Orders.

(1) In all cases, the notations of judgments and orders in the civil docket by the clerk will be made at the earliest practicable time. The notations of judgment will not be delayed pending taxation of costs, but there may be inserted in the judgment a clause reserving jurisdiction to tax and apportion the costs by subsequent order.

(2) Orders under subdivision (a) of this Rule will be noted in the civil docket immediately after the clerk has signed them.

(3) No judgment or order, except orders granted by the Clerk under Civil Rule 77.1 and judgments which the Clerk is authorized by the Guam Rules of Civil Procedure to enter without direction of the Court, will be noted in the civil docket until the clerk has received from the Court a specific direction to enter it. Unless the Court's direction is given to the clerk in open court and noted in the minutes, it should be evidenced by the judge's signature or initials on the judgment or order.

(4) Every order and judgment shall be filed in the Clerk's Office.

CVR 65.1 Temporary Restraining Orders and Preliminary Injunctions.

(a) Application for Temporary Restraining Order or Preliminary Injunction. An application for a temporary restraining order or preliminary injunction shall be made in a document separate from the complaint.

(b) Preliminary Injunctions. When a temporary restraining order ("TRO") is not sought, an application for a preliminary injunction shall be made by motion and not by order to show cause. When a TRO is sought, application for a preliminary injunction shall be made by order to show cause. If the TRO is granted, the hearing on the order to show cause will be set within ten (10) days after the entry of the TRO unless otherwise agreed by the parties. If the TRO is denied, the Court may set the hearing on the order to show cause re: preliminary injunction without regard to the requirements of CVR 7.1.

CVR 65.1.1 Bonds and Sureties.

(a) Security for Costs.

On its own motion or a party's motion, the Court may order any party to file a bond for costs in an amount and under conditions designated by the Court. After the bond is filed, any opposing party may raise objections to its form or to the sufficiency of the surety for determination by the Clerk. If the bond is found to be insufficient, the Court may order the filing of a sufficient bond within a specified time. If the order is not complied with, the Clerk may enter dismissal of the action as in the case of dismissal for want of prosecution.

(b) Qualifications of Surety. Every bond for costs under these Rules must have as surety either **(1)** a cash deposit, certified check or bank check equal to the amount of the bond or **(2)** a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under Title 31 U.S.C. §§ 9301-9309, or **(3)** two individual residents of Guam, each of whom owns real or personal property within Guam sufficient in value above encumbrances to justify the full amount of the suretyship, or **(4)** any insurance, surety or bonding company licensed to do business in Guam.

(c) Court Officers as Surety. No clerk, marshal or other employee of the Court, nor any member of the bar representing a party in the particular action or proceeding, will be accepted as surety on any bond or other undertaking in any action or proceeding in this Court. Cash deposits on bonds may be made by members of the bar on certification that the funds are the property of a specified person who has signed as surety on the bond. Upon exoneration of the bond, such monies shall be returned to the owner and not to the attorney, unless the Court orders otherwise.

(d) Suits by Indigent Persons. At the time an application is made, for leave to commence any civil proceeding without being required to prepay fees and costs or give security for them, the

applicant shall file a written consent that the recovery, if any, in the proceeding, to the amount as the Court may direct, shall be paid to the clerk who may pay therefrom all unpaid fees and costs taxed against the plaintiff and, to plaintiff's attorney, the amount which the Court allows or approves as compensation for the attorney's services.

(e) Deposit of Money or United States Obligations in Lieu of Surety. In lieu of surety in any civil case, there may be deposited with the clerk of the Court lawful money or negotiable bonds or notes of the United States or certificates of deposit from federally-insured financial institutions. The depositor shall execute a suitable bond, and, if negotiable bonds or notes of the United States or certificates of deposit from federally-insured financial institutions are deposited, shall also execute the agreement required by 31 U.S.C. § 9303 or any other required agreement, authorizing the clerk to collect or sell the bonds, notes, or certificates of deposit in the event of default.

(f) Examination of Sureties. Any party may apply for an order requiring any opposing party to show cause why it should not be required to furnish further or different security, or requiring personal sureties to justify.

CVR 66.1 Receivers.

(a) Appointment of Receivers. Application for the appointment of a receiver may be made after the complaint has been filed and the summons issued.

> **(1) Temporary Receivers**. A temporary receiver may be appointed without notice to the party sought to be subjected to a receivership in accordance with the requirements and limitations of the Guam Rules of Civil Procedure.
>
> **(2) Permanent Receivers**. A permanent receiver may be appointed after notice and hearing upon an order to show cause. This order shall be issued by a judge upon appointment of a temporary receiver or upon application of the plaintiff and shall be served on all parties. The defendant shall provide the temporary receiver (or, if there is no temporary receiver, the plaintiff) within five (5) days, with a list of the defendant's creditors, and their addresses. Not less than five (5) days before the hearing, the temporary receiver (or, if none, the plaintiff) shall mail to the creditors listed, a notice of hearing, and file a proof of mailing.
>
> **(3) Bond**. A judge may require any receiver appointed to furnish a bond in an amount which the judge deems reasonable.

(b) Employment of Experts. The receiver shall not employ an attorney, accountant or investigator without an order of a judge. The compensation of all such employees shall be fixed by the judge.

(c) Application for Fees. All applications for fees for services rendered in connection with a receivership shall be made by petition setting forth in reasonable detail the nature of the services and shall be heard in open court.

(d) Deposit of Funds. A receiver shall deposit all funds received in a depository designated by the judge, entitling the account with the name and number of the action. At the end of each month, the receiver shall deliver to the clerk a statement of account and the canceled checks.

(e) Reports. Within thirty (30) days of appointment, a permanent receiver shall file with the Court a verified report and petition for instructions. The petition shall be heard on ten (10) days notice to all known creditors and parties. The report shall contain a summary of the operations of the receiver, an inventory of the assets and their appraised value, a schedule of all receipts and disbursements, and a list of all creditors, their addresses and the amounts of their claims. The petition shall contain the receiver's recommendation as to the continuance of the receivership and reason for the recommendations. At the hearing, the judge shall determine whether the receivership shall be continued and, if so, the judge shall fix the time for future reports of the receiver.

(f) Notice of Hearings. The receiver shall give all interested parties at least ten (10) days notice of the time and place of hearings concerning:

(1) Petitions for the payment of dividends to creditors;

(2) Petitions for confirmation of sales of property;

(3) Reports of the receiver;

(4) Applications for fees of the receiver or of any attorney, accountant or investigator, the notice to state the services performed and the fee requested; and,

(5) Applications for discharge of the receiver.

CVR 67.1 Deposit in Court.

See General Rule 8.1.

CVR 77.1 Orders Grantable by Clerk.

The Clerk of Court is authorized to grant, sign, and enter the following orders without further direction by the Court. Any orders so entered may be suspended, altered, or rescinded by the Court for cause shown:

(a) Orders on consent satisfying a judgment or an order for the payment of money;

(b) Orders entering judgments on verdicts or decisions of the Court in circumstances authorized in Rule 58, Guam Rules of Civil Procedure, and orders entering defaults for failure to plead or otherwise defend, in accordance with Rule 55, Guam Rules of Civil Procedure;

(c) Any other orders which pursuant to Rule 77(c) of the Guam Rules of Civil Procedure, do not require allowance or order of the Court.

CVR 77.2 Clerk of Court.

See General Rule 7.1.

CVR 79.1 Custody and Disposition of Exhibits and Transcripts.

(a) Custody. Every exhibit offered in evidence, including depositions and transcripts, shall be held in the custody of the clerk of this Court. Unless reason exists for retaining originals, the judge will, upon application, order them returned to the party to whom they belong upon the filing of copies thereof approved by counsel for all parties concerned.

(b) Delivery to Person Entitled in Civil Cases. In all civil cases in which final judgment has been entered and the time has expired for filing a motion for new trial, a motion for rehearing or a notice of appeal, any party or person may withdraw any exhibit, deposition, or transcript of testimony originally produced by him, without court order, upon ten (10) days written notice to all parties, unless within that time another party or person files notice of claim thereto with the clerk. In the event of competing claims, the Court shall determine the person entitled and order delivery accordingly. For good cause shown, the Court may allow withdrawal or determine competing claims in advance of the time above specified.

(c) Unclaimed Exhibits in Civil Cases. If exhibits, depositions or transcripts of testimony in civil cases are not withdrawn within twenty (20) days after the time when notice may first be given under subdivision (b) of this Rule, the clerk shall give notice to the parties to claim the same. If the parties do not withdraw such exhibits, depositions and transcripts of testimony within forty (40) days after notice by the clerk to claim the same, the clerk may destroy them in accordance with Title 6 GCA § 4307 or make other disposition as he sees fit.

Emergency Telephone Numbers. When counsel urgently need action or assistance and cannot wait for normal business hours, counsel may contact the clerk of court at 635-0964.

ATTACHMENT "CVR 7.1A"

Civil Case No. _____
(TITLE OF CASE)

AGREEMENT OF HEARING DATE

Pursuant to Local Rule 7.1, the parties hereby acknowledge the following:

1. I, _____, am the attorney for the _____ in this matter. I contacted the attorney(s) for the opposing party(ies) in this action, or if the opposing party(ies) is/are pro se, I contacted the pro se party(ies), to agree upon a date for oral argument of my Motion _____.

2. The attorney(s) for the opposing party(ies) [or the pro se parties] is/are:

3. We agreed upon the following date: _____.

4. I called the Chamber Clerk to ensure that the Court is available on the above date.

OR

I request oral argument and the party(ies) opposing the motion will not agree to an oral argument date.

DATED: _____

_____
Attorney For Party Requesting
Oral Argument

ATTACHMENT "CVR 16.1A"

Civil Case No. _____
(TITLE OF CASE)

SCHEDULING ORDER

Pursuant to Rules 16 and 26(f) of the Guam Rules of Civil Procedure, and Superior Court of Guam Civil Rule 16.1, the parties hereby submit the following Scheduling Order:

1. The nature of the case is as follows:

2. The posture of the case is as follows:

a) The following motions are on file:

b) The following motions have been resolved:

c) The following discovery has been initiated:

3. Status of Discovery:

The Discovery Plan attached hereto is adopted and incorporated as part of this Scheduling Order; OR

a) The times for disclosures under Rules 26(a) and 26(e) of the Guam Rules of Civil Procedure are modified as follows:

b) The following is a description and schedule of all pretrial discovery each party intends to initiate prior to the close of discovery:

Plaintiff:

Defendant:

4. All parties will be joined by:

5. Motions to amend pleadings will be filed by:

6. The parties shall appear before the court on _____ at __:__ _.m. for the Scheduling Conference.

7. The discovery cut-off date (defined as the last day to file responses to discovery) is:

8.

a) The anticipated discovery motions are:

All discovery motions shall be filed on or before _____ and heard on or before_____.

b) The anticipated dispositive motions are:

All dispositive motions shall be filed on or before _____ and heard on or before_____.

9. The prospects for settlement are:

10. The Pretrial Conference shall be held on the ____ day of _____, at __:__ _.m.

11. The parties' pretrial materials, discovery material, witness lists, designations and exhibit lists shall be filed on or before _____

14. The trial shall be held on the _____ day of _____, ____, at __:__ _.m.

15. The trial is / is not a jury trial.

16. It is anticipated that it will take _____ days to try this case.

17. The names of counsel on this case are:

18. The parties do/do not wish to submit this case to a settlement conference.

19. The parties present the following suggestions for shortening trial:

20. The following issues will also affect the status or management of the case:

DATED this ____ day of _____, ____.

_____

Judge _____

APPROVED AS TO FORM AND CONTENT:

Attorney for Plaintiff
Attorney for (indicate)

Attorney for Defendant

ATTACHMENT "CVR 16.1B"

Civil Case No. _____
(TITLE OF CASE)

SCHEDULING NOTICE

The Local Rules establish procedures for complying with Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure. Counsel should study the Local Rules before attempting to process cases in this Court.

Pursuant to Local Rules 16.1 and 16.2, it is hereby ORDERED that:

1. Counsel of record and all pro se litigants that have appeared in the case must meet and confer, within fifteen (15) days after receipt of this Notice, but no later than sixty (60) days after the filing of the complaint, prior to commencing discovery.

2. A proposed Scheduling Order and a proposed Discovery Plan shall be filed on or before the ____ day of _____, 20___. Careful and immediate attention should be given to the directions in Local Rules 16.1 and 16.2 to ensure complete and timely compliance with Guam Rules 16(b) and 26(f), and the Local Rules.

3. Plaintiffs' counsel, or if the plaintiff is pro se, then the pro se plaintiff, must take the lead in the preparation of the Scheduling Order. If a defendant is not contacted by a pro se plaintiff within the required time frame, the defendant's counsel shall contact the pro se plaintiff and arrange a meeting to comply with this Rule in the appropriate time frame. The failure of a party or its counsel to participate in good faith in the framing of a Scheduling Order may result in the imposition of sanctions.

4. Counsel of record and all pro se litigants that have appeared in the case are jointly responsible for submitting a Proposed Discovery Plan to the Court.

5. A Scheduling Conference shall be held on the ____ day of _____, 20____, at __:____ _.m.

6. Counsel are reminded that the filing of motions does not postpone discovery.

_____
RICHARD B. MARTINEZ
Clerk of Court

By: _____
Deputy Clerk

ATTACHMENT "CVR 54.1"

IN THE SUPERIOR COURT OF GUAM

Plaintiff(s),	)	_____ Case No. _____
vs.	)	**BILL OF COSTS**
Defendant(s)	)	

Judgment having been entered in the above-entitled action on _____, 200___ against _____, the Clerk of the Superior Court of Guam is requested to tax the following as costs:

BILL OF COSTS

FILING FEES: $_____

Complaint	$_____
Summons	$_____
Subpoena	$_____
Other Clerk's Fees	$_____

MARSHAL'SFEES: $_____

Service of Summons/Subpoenas	$_____
Mileage	$_____
Other Marshal's costs	$_____

COURT TRANSCRIBER'S FEES: $_____

Other Transcriber's fees	$_____

WITNESS FEES: $_____

Other Witness fees	$_____

INTERPRETER'S FEES: $_____

Other Interpreter's fees $_____

ATTORNEY'S APPEARANCE FEE: $_____

OTHER COSTS (Please itemize): $_____

TOTAL COSTS TO BE TAXED: $_____

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which have been charged were actually and necessarily performed. A copy of this Bill of Costs was served on _____ on _____, at _____ .m.

Executed this _____ day of _____, 200____.

_____
CLAIMING PARTY
(Print name and Sign)

LOCAL RULES OF THE SUPERIORCOURT OF GUAM

MISCELLANEOUS RULES

Effective June 1, 2007

Indigent Defense

MR 1.1. Appointment of Counsel For Indigent Defendants.[1, 2]

MR 1.1.1. Representation.

A. Mandatory. The court shall appoint counsel for a person financially unable to obtain adequate representation who is:

(1) charged with (a) a felony; (b) a misdemeanor; (c) a petty misdemeanor except those filed in Traffic Court (d) juvenile delinquency for the commission of an act which, if committed by an adult, would be considered a felony or misdemeanor; or, (e) a violation of probation or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of probation

(2) in custody as a material witness;

(3) under arrest, when representation is required by law; or,

(4) entitled to appointment of counsel under the Sixth Amendment to the United States Constitution, or facing loss of liberty and Guam law, the United States Constitution, or the applicable provisions of the Organic Act, require the appointment of counsel.

B. Discretionary. The court may appoint counsel for a person who is financially unable to obtain representation who is:

(1) charged with civil or criminal contempt and facing loss of liberty;

(2) seeking collateral relief from a judgment in a criminal matter; or,

(3) a person whose rights under the United States Constitution (or the Organic Act) may be substantially infringed without the appointment of counsel.

SOURCE: Repealed and reenacted by Sup. Ct. of Guam Prom. Order No. 05-004 (May 3, 2005).

MR 1.1.2. Determination of Need.

A. Determination. Before the appointment of counsel under these Rules, the court shall inquire into, and make a finding, as to whether the person is financially able to obtain adequate representation. The court shall inquire as to the information requested in the Financial Declaration (a copy of which is attached hereto as **Appendix A**). All statements by the person in such inquiry shall be under penalty of perjury. All persons seeking counsel under these Rules shall submit the Financial Declaration to the court. The court may appoint counsel subject to the submission of the Financial Declaration. The court shall not appoint counsel unless a Financial Declaration is submitted.

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[1] **Preamble.** The Rules for Appointment of Counsel for Indigent Defendants and any amendments thereto are hereby repealed. Pursuant to its authority under 48 U.S.C. § 1424-1(a)(6) and Title 7 Guam Code Annotated, section 3107(b), the Supreme Court of Guam herein promulgates Rule 13 of the Rules for the Superior Court of Guam governing the appointment of counsel for persons financially unable to obtain adequate representation in criminal and quasi-criminal matters in the courts of Guam.

The priority of appointments shall be: Public Defender, Alternative Public Defender, Private Attorney Panel, and active members of the Guam Bar Association.

[2] **SOURCE:** Adopted by Sup. Ct. Prom. Order No. 02-009, (Nov. 19, 2002). Amended by Sup. Ct. of Guam Prom. Order Nos. 04-003 (Feb. 27, 2004), 04-004 (Mar. 9, 2004), and 05-004, (May 3, 2005). Appendix "B", Private Attorney Panel, amended by Prom. Order No. 07-001, effective Jan. 18, 2007.

B. Need. The court shall determine the person's ability to obtain adequate representation according to the financial guidelines then in effect established by the Public Defender Service Corporation.

C. Redetermination.

(1) If, at any stage of the proceedings, the court determines pursuant to these Rules, that a party, who previously had not had counsel appointed, has become financially unable to obtain adequate representation, the court may then appoint counsel for that person.

(2) If at any time after appointment under these Rules, counsel obtains information that the person is now financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of such information is not protected as a privileged communication, counsel shall so advise the court.

SOURCE: Repealed and reenacted by Sup. Ct. of Guam Prom. Order No. 05-004 (May 3, 2005).

MR 1.1.3 Manner of Appointment.

A. Priority. The Chief Justice and each Judge of the Superior Court shall appoint counsel in the order set forth below:

(1) The Public Defender Service Corporation;

(2) The Alternative Public Defender Office;

(3) The Private Attorney Panel; and

(4) Active members of the Guam Bar Association.

The Chief Justice or a Judge of the Superior Court may, appoint counsel in derogation of the order set forth above for good cause shown, such good cause to be entered on the record. The Chief Justice or a Judge of the Superior Court shall ordinarily appoint the same lawyer or law firms for the same client when said client has more than one pending matter.

More than one attorney may be appointed in any case determined by the Chief Justice or the Judge of the Superior Court assigned to the case to be extremely difficult, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

B. Private Attorney Panel.

(1) Formation of a Standing Committee to Oversee the Private Attorney Panel.

(a) The Supreme Court of Guam shall create a Standing Committee to oversee the Private Attorney Panel ("PAP"). The PAP attorneys approved at the time of this Prom. are identified in **Appendix B**. The Standing Committee shall consist of five (5) attorneys, each a voting member, who possess sufficient experience and interest in the local criminal justice system to administer the PAP.

(b) The Public Defender of Guam, or his or her representative, will be a permanent voting member of the Standing Committee. The Clerks of the Superior and Supreme Courts of Guam, or their respective designees, shall be an ex officio, non-voting members of the Standing Committee.

(c) In addition to the Public Defender, or his or her representative, two (2) of the members of the Standing Committee will be appointed by the Chief Justice for a one-year term and the remaining two (2) members for a two-year term. Thereafter, appointments will be made for two-year terms. The Standing Committee will be permitted to use the staff of the Clerks Office of the Supreme and Superior Court for clerical and record-keeping matters for respective trial and appellate matters.

(d) The Standing Committee shall elect from its members who are private attorneys a chairperson, who shall preside over its meetings and serve as the liaison between the PAP, the Judiciary and the community.

(e) The Standing Committee shall meet formally at least once per year. In addition to reviewing and determining PAP membership, the Standing Committee shall identify and define any operating difficulties encountered in the administration of the PAP and make recommendations to the Supreme Court for appropriate changes to this rule.

(f) The Standing Committee shall also coordinate with the Public Defender Service Corporation of Guam in providing training for the PAP. Such training shall include correspondence with PAP attorneys on substantive and procedural changes in the law, local rules, and other matters affecting the PAP attorneys, and shall also include regularly scheduled seminars for PAP attorneys, and if possible, the private bar.

(2) Formation of the Private Attorney Panel.

(a) Pursuant to the terms of this Rule, PAP attorneys shall be members of the Guam Bar Association. In addition to bar membership, the PAP attorneys should have when applicable, prior criminal trial experience, significant involvement in serious or complex criminal cases, knowledge of the Rules of Criminal Procedure and the bail statutes, knowledge of other relevant areas of criminal practice, clinical experience or participation in trial advocacy programs, prior juvenile, guardian ad litem, and or appellate experience.

(b) The PAP shall consist of attorneys recommended and approved by a majority of the Standing Committee.

(c) An attorney who is interested in becoming a member of the PAP shall complete and submit the attached Private Attorney Panel Application (**Appendix C**).

(d) The Standing Committee shall compile and review all applications, and prepare a list of applicants who possess the qualifications required for the PAP. The Standing Committee shall also compile a pending applications list, which will include those attorneys requiring more training prior to being placed on the regular PAP list.

(e) These two lists shall be distributed to all members of the Standing Committee, all Justices and Judges, as well as to the Clerk of each Court. Each person receiving the lists shall review them and return them to the Standing Committee with the names of any attorneys absent from the list who should be contacted to ascertain their interest in participating on the PAP. Attorneys interested in being included on the PAP would then be given an opportunity to complete an application.

(f) Those receiving the lists shall also review them to identify the individuals who should not be included on the PAP, and shall state the reason(s) for such recommendation. The reason(s) should be based on the following factors: (a) a perceived lack of competence or knowledge; (b) a perceived lack of interest and motivation; (c) a perceived lack of training; (d) an unwillingness to make the necessary commitment to the PAP; or (e) a lack of willingness to provide the quality of representation deemed necessary. The person making the recommendation should be as specific as possible. concerning the reasons, with all such recommendations being confidential. The Standing Committee, by majority vote, will make a recommendation to the Supreme Court Justices or Superior Court Judges, whichever is appropriate, concerning whether the prospective PAP member should be included on the final PAP. Supreme Court Justices will decide all matters dealing with the Appellate Panel. Superior Court Judges will decide all matters dealing with the Criminal, Juvenile and Guardian Ad Litem

Panels. Final decisions regarding membership on the PAP will be made by a majority vote of the Supreme Court Justices or Superior Court Judges, whichever is appropriate.

(g) The final PAP shall consist of approximately 10 - 15 members in each of the following four (4) categories: Criminal (misdemeanor and felony), Juvenile, Guardian Ad Litem, and Appellate.

(h) Creation of a Pending Applications List.

i) A "Pending Applications List" shall be established, consisting of lawyers who have applied for membership on the PAP and who do not yet possess sufficient skill, knowledge or experience to be on the PAP. Pending final approval of their applications, such attorneys shall receive training and shall serve, without compensation, in a second chair capacity to a PAP attorney on a given case, or aspects of a given case, including, but not limited to, bail hearings, sentencing proceedings, and appellate arguments.

ii) Each Clerk's Office and the Standing Committee shall maintain the pending applications list. PAP attorneys will be advised of the existence of such a list and will be expected to contact the appropriate Clerk's Office or a Standing Committee member to obtain the names of people seeking to serve in a second chair capacity. The Standing Committee shall then periodically review the pending applications list and make recommendations to the Supreme Court Justices or Superior Court Judges, whichever is applicable, as to which attorneys should be moved onto the regular PAP.

(3) Adding and Removing Attorneys from the Private Attorney Panel.

(a) Additions.

i) The Standing Committee shall monitor the operation of the PAP to determine whether it meets the needs of current case load requirements. Additions to the PAP shall be made through the approval of new applications and by moving attorneys from the pending applications list to the regular PAP. New applications shall be collected by each Clerk's Office and referred to the Standing Committee for periodic review.

ii) By majority vote, the Standing Committee shall decide which applicants need further training, thereby remaining on the pending applications list, and which ones are to be referred to the Supreme Court Justices or Superior Court Judges, whichever is applicable, for inclusion on the PAP. Final decisions on inclusion will be made by a majority of the Supreme Court Justices or Superior Court Judges, whichever is applicable.

(b) Suspensions.

i) Attorneys who have been suspended or disbarred from a court of any state, territory, commonwealth or possession of the United States and who are the subject of reciprocal discipline pursuant to the Supreme Court of Guam Rules for the Discipline of Attorneys, or who are presented for discipline in the Supreme Court of Guam, shall be suspended from the list pending disposition of the ethics proceedings. If the attorney is counsel of record in a pending case, the trial Judge or the Chief Justice shall be notified by their respective Clerk's Office. If the attorney is suspended or disbarred, the attorney shall be removed from the PAP, and will be eligible to reapply only if he or she later becomes a member Guam Bar Association in good standing.

(c) Removals.

i) Any complaints about the performance or commitment of a PAP attorney shall be referred to the Standing Committee. The Standing Committee shall also take notice of such deficiencies on its own and make recommendations to the Supreme Court Justices or

Superior Court Judges, whichever is applicable, for removal from the PAP. At the request of a Justice, Judge, Clerk of each court, or individual Standing Committee member, the Standing Committee shall review complaints about a PAP member. The receipt and handling of complaints will be confidential.

ii) The PAP attorney shall be notified of any complaint, and shall have the right to request a hearing before the Standing Committee. At the hearing, the attorney shall have all due process rights, including representation by counsel, the right to be informed of the nature of the complaint and the right to present testimony on his or her behalf. A recommendation for or against removal shall be by majority vote and forwarded to the Supreme Court Justices or Superior Court Judges, whichever is applicable, for appropriate action. Removal of the attorney from the PAP shall be by majority vote of the Supreme Court Justices or Superior Court Judges, whichever is applicable.

(4) Assignment of Cases to the Private Attorney Panel.

(a) The Chief Justice of the Supreme Court and the Judges of the Superior Court shall be responsible for overseeing the assignment of cases to PAP attorneys in the respective courts. Assignments shall be made on a rotational basis, except under circumstances where a Judge or Justice for good cause directs otherwise. PAP attorneys may refuse or "pass" an appointment when unavailable to assume the case due to scheduling conflicts, workload, or other good cause. Reasons for passing appointment shall be given to the Chief Justice of the Supreme Court or the Judge of the Superior Court overseeing the case, and passing may not be done more than three times during a calendar year. Upon an appointment, the PAP attorney shall immediately determine if a conflict of interest exists preventing representation and inform the court. No payment shall be made by the court for the determination of a conflict. PAP attorneys shall not charge the court for determining whether a conflict exists.

(b) The respective Clerk's Offices of the Supreme Court and Superior Court and each respective courtroom clerk of the Superior Court shall maintain a master computer generated list of PAP appointments, which will include the date of each appointment, the case name, the date of each pass by a PAP attorney, and the reason for each pass.

(c) If the Chief Justice of the Supreme Court or a Judge of the Superior Court determines that a PAP attorney has repeatedly passed assignments, the Chief Justice of the Supreme Court or a Judge of the Superior Court may refer the name of the attorney to the Standing Committee. The Standing Committee shall then consider the information provided by the Chief Justice of the Supreme Court or a Judge of the Superior Court and make such further inquiry or recommendation to the Supreme Court Justices or Superior Court Judges, whichever is applicable, as it deems appropriate, including removal from the PAP.

(d) Each of the respective Clerk's Offices of the Supreme Court and the Superior Court shall also maintain a public record of assignments to the Public Defender Service Corporation of Guam, Alternative Public Defender, the PAP, and active members of the Guam Bar Association as well as current statistical data reflecting the proration of appointments.

(e) The Public Defender Service Corporation of Guam will make such arrangements with local investigative and police agencies as will adequately assure that at the earliest practicable stage, persons arrested under circumstances where representation is required by law may promptly have counsel furnished to them.

(5) Rotation of Appointments. All appointments shall be made in an orderly manner to ensure fair distribution of appointments amongst PAP members. Appointments from the PAP shall, unless the Chief Justice or Judge for good cause determines otherwise, be in alphabetical order, but the next qualified attorney may be appointed when the court determines that:

(a) there is a conflict of interest;

(b) the attorney lacks sufficient experience in a serious felony matter;

(c) the attorney is unavailable to promptly handle the matter; or

(d) an immediate appointment of counsel is required.

(C) Records.

(1) The Clerk of the Supreme Court and Clerk of the Superior Court shall each maintain:

(a) a master computer generated list of all attorneys on the Panel;

(b) a master computer generated list for the public record of all appointments, including the numbers and types of cases as assigned to the various law firms and attorneys described in Rule 13.3(A) and (B) above; and,

(c) current data on the status of invoices and payment for all court appointments.

(2) The Public Defender and the Alternative Public Defender shall prepare monthly reports on court appointments and submit such reports to the Administrator of the Courts.

(D) Counsel appointed under these Rules shall, unless excused by order of the court, continue to act for the person throughout the proceedings in this court. Appointed counsel is expected to appear personally at all proceedings, with substitutions or the filing of additional appearance permitted only with leave of the court. The judge before whom a case is pending may, in the interest of justice substitute one appointed counsel for another at any stage of the proceedings.

In all criminal cases, counsel shall advise the defendant of the right to appeal and of the right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal, and shall continue to represent the defendant, until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; until the appointment is terminated by court order; or until the attorney is relieved by the court.

SOURCE: Subsections (A) and (B) repealed and reenacted; subsection (C) added, all by Sup. Ct. of Guam Prom. Order No. 04-003 (Feb. 27, 2004). Subsections (C)(2)(3) and (4) amended by Sup. Ct. of Guam Prom. Order No. 04-004 (Mar. 9, 2004). Repealed and reenacted by Sup. Ct. of Guam Prom. Order No. 05-004 (May 3, 2005).

MR 1.1.4. Investigative, Expert and Interpretative and Paralegal Services.

(A) The court may authorize counsel appointed under these Rules to retain the services of investigators, experts and interpreters upon a showing that such services are necessary for adequate representation of the person. The hourly rate for investigators, experts and interpreters shall not be less than $25.00.

(B) Prior to retaining the services of investigators, experts or interpreters, counsel appointed under these Rules shall submit an application for approval of such services by the court. Failure to obtain approval prior to retaining such services may bar payment or reimbursement from the court for same, absent a finding by the court of sufficiently compelling circumstances.

(C) Where counsel has received prior authorization for investigators, experts and interpreters, the maximum total shall not exceed $1,500.00. Counsel appointed under these rules may apply to the Administrator of the Courts to exceed this maximum. Counsel must demonstrate extraordinary circumstances and good cause to justify an exception to the maximum. Approval of any amount in excess of the limit herein shall be approved by the Administrator of the Courts. The Superior Court Judge presiding over the case may provide input in this regard.

(D) An investigator shall not be paid for time in court unless called as a witness in the case.

(E) The total cost of all services obtained without prior authorization may not exceed a total of $250.00 and expenses reasonably incurred.

(F) An attorney appointed under these rules may, in her discretion, use the services of a paralegal. A paralegal hired under these rules shall not be paid more than $45.00 per hour and such services shall not be separately charged to the court.

SOURCE: Repealed and reenacted by Sup. Ct. of Guam Prom. Order No. 05-004 (May 3, 2005).

MR 1.1.5. Compensation.

(A) Unless otherwise provided for, the hourly rate for legal services by counsel appointed under these Rules shall be $90.00 per hour for legal services rendered in and out of the courtroom, subject to the following maximums:

(1) Not more than $7,500.00 shall be paid for felonies.

(2) Not more than $2,500.00 shall be paid for misdemeanors.

(3) Not more than $2,500.00 shall be paid for juvenile cases.

(4) Not more than $2,500.00 shall be paid for each level of appeal in a particular case.

Counsel appointed under these rules may apply to the Administrator of the Courts to exceed these maximums. Counsel must demonstrate extraordinary circumstances and good cause to justify an exception to the maximums. Approval of any amount in excess of the limits herein shall be approved by the Administrator of the Courts. The Superior Court Judge presiding over the case may provide input in this regard.

(B) No counsel appointed under these Rules may request or accept any payment, or promise of payment, for such representation unless such payment is approved by order of the court.

(C) Application for payment by appointed counsel shall be submitted on the appropriate voucher form to the Clerks of the Superior Court and Supreme Court, whichever is applicable. Appointed counsel shall submit vouchers on a monthly basis. The Clerks for each court shall not approve payments unless vouchers are submitted as herein provided. The Administrator of the Courts shall have sixty (60) days to act on the submitted voucher. Failure to act within the sixty-day time period shall be deemed an approval of the submitted voucher.

SOURCE: Subsection (A) and (C) repealed and reenacted by Sup. Ct. of Guam Prom. Order No. 04-003 (Feb. 27, 2004). Repealed and reenacted by Sup. Ct. of Guam Prom. Order No. 05-004 (May 3, 2005).

APPENDIX OF FORMS

Miscellaneous Rule 1.1

A. Financial Declaration

B. Private Attorney Panel

C. Private Attorney Panel Application

APPENDIX "A"

FINANCIAL DECLARATION

IN SUPPORT OF REQUEST FOR LEGAL COUNSEL WITHOUT PAYMENT OF FEE

IN THE UNITED STATES TERRITORY OF GUAM: ☐ FAMILY COURT ☐ SUPERIOR COURT ☐ SUPREME COURT

IN THE CASE OF:

_____ vs. _____

PERSON REPRESENTED (SHOW YOUR FULL NAME):

SOCIAL SECURITY NUMBER:

CHARGE/OFFENSE (DESCRIBE IF APPLICABLE & CHECK BOX):

☐ FELONY ☐ MISDEMEANOR

DOCKET NUMBER

_____

1 ☐ DEFENDANT - ADULT 4 ☐ PROBATION VIOLATOR

2 ☐ DEFENDANT - JUVENILE 5 ☐ HABEAS PETITIONER

3 ☐ APPELLANT (IF SO, WAS COUNSEL PREVIOUSLY APPOINTED FOR YOU ☐ YES ☐ NO 6 ☐ OTHER (SPECIFY)

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

EMPLOYMENT

ARE YOU NOW EMPLOYED? ☐ YES ☐ NO ☐ SELF EMPLOYED. NAME AND ADDRESS OF EMPLOYER:

IF YES, HOW MUCH DO YOU EARN PER MONTH?

IF NO, GIVE MONTH AND YEAR OF LAST EMPLOYMENT. _____ HOW MUCH DID YOU EARN PER MONTH? $

IF MARRIED, IS YOUR SPOUSE EMPLOYED? ☐ YES ☐ NO IF YES, HOW MUCH DOES YOUR SPOUSE EARN PER MONTH? $

IF A MINOR UNDER AGE 21, WHAT IS YOUR PARENTS' OR GUARDIAN'S APPROXIMATE MONTHLY INCOME? $

OTHER INCOME

HAVE YOU RECEIVED WITHIN THE PAST YEAR ANY INCOME FROM A BUSINESS, PROFESSION OR OTHER FORM OF SELF-EMPLOYMENT, OR IN THE FORM OF RENT PAYMENTS, INTEREST, DIVIDENDS, RETIREMENT OR ANNUITY PAYMENTS, SPOUSAL SUPPORT PAYMENTS, OR OTHER SOURCES? ☐ YES ☐ NO

	RECEIVED	SOURCES
IF YES, GIVE THE AMOUNT	$ _____	_____
RECEIVED & IDENTIFY	$ _____	_____
THE SOURCES	$ _____	_____

ARE YOU CURRENTLY RECEIVING WELFARE BENEFITS? OF ANY KIND? ☐ YES ☐ NO IF YES, GIVE THE AMOUNT PER MONTH AND DESCRIBE THE BENEFIT.

AMOUNT	TYPE OF BENEFIT
$ _____	_____
_____	_____

CASH

HAVE YOU ANY CASH ON HAND OR MONEY IN SAVINGS OR CHECKING ACCOUNTS? ☐ YES ☐ NO IF YES, STATE TOTAL AMOUNT $ _____

PROPERTY

DO YOU OWN ANY REAL ESTATE, STOCKS, BONDS, NOTES, AUTOMOBILES, OR OTHER VALUABLE PROPERTY (EXCLUDING ORDINARY HOUSEHOLD FURNISHINGS AND CLOTHING)? ☐ YES ☐ NO

IF YES, GIVE VALUE AND DESCRIBE

VALUE	DESCRIPTION
$ _____	_____
_____	_____
_____	_____

DEPENDENTS

MARITAL STATUS

☐ SINGLE

☐ MARRIED

☐ WIDOWED

☐ SEPARATED OR DIVORCED

TOTAL NO. OF DEPENDENTS: ( )

LIST PERSONS YOU ACTUALLY SUPPORT AND YOUR RELATIONSHIP TO THEM.

_____

_____

_____

_____

DEBTS & MONTHLY BILLS

APARTMENT OR HOME	CREDITORS (LIST ALL CREDITORS INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.	TOTAL DEBTS	MONTHLY PAYMENTS
_____		$ _____	$ _____
_____		$ _____	$ _____
_____		$ _____	$ _____

I DECLARE UNDER PENALTY OF PERJURY, THE FOREGOING IS TRUE AND CORRECT. IN ADDITION, BY MY SIGNATURE BELOW, I HEREBY AGREE TO MAKE AVAILABLE TO THE COURTS OF GUAM ANY AND ALL DOCUMENTS WITHIN MY POSSESSION, OR WITHIN THE POSSESSION FOR THE DEPARTMENT OF REVENUE AND TAXATION, RELATING TO MY FINANCIAL STATUS.

SIGNATURE OF DEFENDANT (OR PERSON TO BE REPRESENTED): _____ _____

WARNING: A FALSE OR DISHONEST ANSWER TO A QUESTION IN THIS DECLARATION MAY BE PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH. SEE TITLE 9, GUAM CODE ANNOTATED, SECTIONS 52.15 AND 52.20.

APPENDIX "B"

INTERIM PRIVATE ATTORNEY PANEL

(Pursuant to Prom. Order No. 07-001, effective Jan. 18, 2007
until further order of the Supreme Court of Guam)

FELONIES AND MISDEMEANOR CASES

Joaquin C. Arriola, Jr.
F. Randall Cunliffe
Peter C. Perez
Sylvia L.G. Stake
Samuel Teker
John C. Terlaje
Mitchell F. Thompson
Louie J. Yanza
Mark S. Smith
David Rivera
Ronal P. Moroni
Thomas J. Fisher
Anthony R. Camacho

JUVENILES (JDS AND JSP AND OTHER SPS)

Carol A. Telford Butler
Cynthia V. Ecube
Harold F. Parker
Guam Legal Services
Corporation (GLSC)
Patrick M. Wolff
Ronald P. Moroni

Mylene N.R. Lopez
Ross E. Putnam
John C. Terlaje
George M. Butler
Anthony R. Camacho
Thomas J. Fisher

GUARDIAN AD LITEM JUVENILE CASES ONLY)

Carol A. Telford Butler
Cynthia V. Ecube
Guam Legal Services Corporation (GLSC)
Harold F. Parker
Patrick M. Wolff
Ronald P. Moroni
George M. Butler

APPELLATE CASES

Ladd A. Baumann
Maria B. Cenzon-Duenas
Vincent Leon Guerrero
Peter C. Perez
Ronald P. Moroni
Thomas J. Fisher
Anthony R. Camacho

APPENDIX "C"
PRIVATE ATTORNEY PANEL APPLICATION

Name: _____ **Social Security No.:** _____

Address: (include firm name, if any) **Telephone No.:** _____

_____

_____

Date of Bar Admissions:

State/territorial courts (specify jurisdiction): _____
Have you ever served on a panel of this nature? _____ Yes _____ No
(If yes, state where and when)

_____

QUESTIONS RELATING TO CRIMINAL COURT, JUVENILE AND GUARDIAN AD LITEM EXPERIENCE:

Have you ever been employed as a Public Defender? _____ Yes _____ No
(If yes, state where and when)

_____

Have you ever worked as a prosecuting attorney? _____ Yes _____ No

(If yes, state where and when)

_____

Have you ever attended training programs focusing on criminal practice?
Bail statutes 9 GCA Chapter 40: _____ Yes _____ No
(If yes, state where and when)

_____

Other: _____ Yes _____ No
(If yes, state where, when & nature of seminar)

_____

How Many Trials Have You Personally Conducted?

_____ %	Jury Trials	_____ %	Court Trials
_____ %	as Defense Attorney	_____ %	as Prosecutor
_____ %	Primarily Responsible	_____ %	Second-chaired

Please give range regarding lengths of these trials. _____

How many guilty pleas have you handled? _____
_____ % as Defense Attorney _____ % as Prosecutor

Please describe the types of cases you have handled.

_____

_____

_____

Please indicate your juvenile litigation experience by providing examples of your practice, type of case (JD, J.P., Guardian Ad Litem), fact finding involvement, length, etc.

_____

_____

_____

Miscellaneous Information:

_____

_____

_____

Please indicate your civil litigation experience by providing examples of your practice, types of cases, trial involvement, length, etc.

_____

_____

_____

Please explain any other relevant experience which explains why you would like to be on the PAP.

_____
_____
_____

QUESTIONS RELATING TO APPELLATE EXPERIENCE:

Please explain your appellate experience by providing the following information: Number of appellate briefs written to the Guam Supreme Court, District Court of Guam Appellate Division, Ninth Circuit Court of Appeals, U.S. Supreme Court or any other appellate courts.

_____
_____
_____

Please explain your appellate experience by providing the following information: Number of oral arguments you participated in before the Guam Supreme Court, District Court of Guam Appellate Division, Ninth Circuit Court of Appeals, U.S. Supreme Court or any other appellate courts.

_____
_____
_____

I have read the rule which governs the Private Attorney Panel. By making this application I am hereby agreeing to abide by the provisions as outlined in the rule.

Dated: _____ _____

Signature

Applications should be returned to either the Clerk of the Supreme or Superior Court, whichever is applicable.

Family Violence Orders of Protection

MR 2.1. Family Violence Orders of Protection.[1]

AUTHORITY: These rules shall govern the Order of Protection process in the Superior Court, for all persons as defined under 9 GCA § 30.10(b), and 7 GCA § 40101(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.

MR 2.1.1. Jurisdiction.

A. Limitation of Process. The following Rules shall apply to the Order of Protection process for all persons as defined under 9 GCA § 30.10(b), and 7 GCA § 40101(d), who seek an order of the Superior Court for exigent and immediate relief from abuse or the threat of abuse by a family or household member. This process does not apply to protection cases filed by the government in cases designated Persons In Need of Services; Beyond Control; and Adult Protection.

COMPILER NOTE: Promulgation Order No. 06-003 mistakenly identified 7 GCA § 40105(d), which does not exist. The correct section is 7 GCA § 40101(d), which defines family or household members. This manifest error was corrected in this section and in the "AUTHORITY" paragraph above by the Compiler of Laws.

MR 2.1.2. Petition.

A. Petition for Order of Protection.

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

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

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

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

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

SOURCE: 19 GCA § 14104.

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

MR 2.1.3. Hearings and Notice.

A. Ex Parte Application for Temporary Order of Protection.

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

[1] **SOURCE:** Rule 14 adopted by Sup. Ct. of Guam Prom. Order No. 06-003 (Mar. 31, 2006). Renumbered by Compiler to follow section number designations for the Rules of the Superior Court of Guam.

and hearing at such times designated by the Ex Parte judge, or any available judge should the Ex Parte judge not be available.

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

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

SOURCE: 19 GCA § 14101.

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

SOURCES: 7 GCA § 40105(b) and § 20301.

B. Final Orders of Protection/Show Cause Hearing.

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

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

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

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

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

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

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

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

SOURCE: 18 USC § 2265(c).

MR 2.1.4. Relief.

A. Temporary Order of Protection. A court may grant the following temporary relief at the ex parte hearing:

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

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

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

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

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

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

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

SOURCES: 7 GCA § 40105; and 19 GCA § 8404.

B. Order of Protection. A court may grant the following permanent relief:

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

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

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

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

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

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

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

SOURCES: 7 GCA § 40105; 19 GCA § 8404, and 9 GCA § 30.32.

MR 2.1.5. Service of Orders.

A. Service of Orders of Protection and Show Cause Orders. The Marshals Division of the Superior Court of Guam will serve all Orders of Protection and Show Cause Orders upon order of the Court, or at the request of the Petitioner. The Petitioner or his/her attorney should provide complete and detailed information on the whereabouts of the Respondent(s). If the Respondent is incarcerated the Petitioner should notify the Marshal of the date of arrest.

MR 2.1.6. Standard of Review.

A. Burden of Proof.

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

SOURCE: 7 GCA § 40104(a).

(2) Immediate and present danger to the Petitioner or minor child/ren shall constitute good cause for the issuance of an Order of Protection.

SOURCE: 7 GCA § 40104(b).

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

SOURCE: 7 GCA § 40104(a).

B. Additional Evidence Required on Ex Parte Application.

(1) A party seeking removal of another party from the family residence under Rule 14.4(A)(4) on ex parte petition must provide, to the satisfaction of the court, proof of ownership of the family residence or leasehold.

SOURCE: 7 GCA § 40105.

(2) A party seeking temporary custody of minor children of the parties under Rule 14.4(A)(6) on ex parte petition must provided proof, by a preponderance of the evidence, of immediate and present danger of abuse to the minor children.

SOURCE: 7 GCA § 40104(b).

MR 2.1.7. Contempt.

A. Civil Contempt.

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

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

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

SOURCES: 7 GCA §§ 40109, 34101(a) and (b); 9 GCA § 80.34.

MR 2.1.8. Firearms.

A. Surrender of Firearms and/or Ammunition.

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

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

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

SOURCE: 18 U.S.C. § 922(g)(8), (9).

B. Federal Firearm Prohibition. An Order for Protection must meet the requirements to satisfy the requirements of a "Qualifying Protection Order" under the federal firearm prohibitions:

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

(2) the Respondent must have had an opportunity to participate in the hearing,

(3) include a finding that the Respondent represents a credible threat to the physical safety of the Petitioner or child; or by its terms, explicitly prohibit the actual, attempted, or threatened use of physical force against the Petitioner or child.

SOURCE: 18 USC § 922(g)(8).

C. Release of Firearms and/or Ammunition.

(1) Any firearm and/or ammunition that has been surrendered pursuant to Rule 14.8(A) shall not be released to a Respondent who is subject to an Order of Protection as set forth in Rule 14.8(B), until the Respondent obtains a court order granting such release.

(2) The Respondent or other registered owner may request, by motion to the assigned judge, for the release of any firearm and/or ammunition surrendered pursuant to Rule 14.8(A). Such motion shall be made after the expiration of the Order for Protection.

(3) At the hearing, the judge shall consider the following:

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

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

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

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

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

(5) The Judiciary shall not be held liable for alleged damage or deterioration due to the storage, transportation of any firearm that was surrendered to a marshal pursuant to Rule 14.8(A).

MR 2.1.9. Enforcement of Orders of Protection.

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

B. Foreign Orders for Protection.

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

SOURCE: 19 GCA § 14105 (a).

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

SOURCE: 19 GCA § 14105 (b).

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

SOURCE: 19 GCA § 14105 (c)(2).

MR 2.1.10. Protective Order Registry.

A. Registry. The Clerk of the Superior Court of Guam shall maintain a registry of all orders for protection and restraining which are:

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

(2) issued by a court in another state, territory, tribe, or commonwealth of the United States, which has been and filed with the Clerk of Court in accordance with Rule 14.9(B)(1). 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 GCA § 14105 (c)(1); 19 GCA § 14106 (a).

B. 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 GCA § 14106.

Video Conferencing

MR 3.1. Video Conferencing.[1]

A. Video Conferencing in Certain Adult Criminal Proceedings.

(1) The trial court shall, except as provided in section (2), use video conferencing technology in first appearances as defined by 8 GCA § 45.30.

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.

(2) 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 shall, except as provided in section (2), use video conferencing technology in the first appearance of a juvenile, who is in custody, before a Judge of the Family Court.

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.

(2) 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, facsimile, or other method.

(3) Video quality must be adequate to allow participants to observe each other's demeanor and non-verbal 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 located next to the juvenile or detainee.

(4) 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.

(1) 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

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[1] **SOURCE**: Adopted as Interim Rule 15 by Sup. Ct. Prom. Order No. 06-004 for 30 days (Mar. 31, 2006), extended a minimum of 30 days by Sup. Ct. Prom. Order No. 06-004-1 (Aug. 9, 2006), adopted as Rule 15 by Sup. Ct. Prom. Order No. 06-004-2 (Oct. 13, 2006), effective immediately.

proceedings authorized by this rule. The Subcommittee, or other authorized body, may update and amend the Standard Operating Procedures as may be required.

ATTACHMENTS TO MISCELLANEOUS RULE 3.1

A. Standard Operating Procedures for Video Conferencing in Magistrate Hearings

B. Flowchart

C. Order of Conditional Release and Appearance Bond

ATTACHMENT "A"

STANDARD OPERATING PROCEDURES FOR VIDEO CONFERENCING IN MAGISTRATE HEARINGS

The use of videoconferencing in magistrate hearings will be governed by Rule 15 of the Rules of Superior Court.

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 attached* SOP Magistrates.
- 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 attached* SOP Magistrates.
- 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 attached* SOP Magistrates.
- Marshal will bring the Commitment Order to DOC.
- Marshal will return original Commitment Order to Clerk.

Interpreted Proceedings

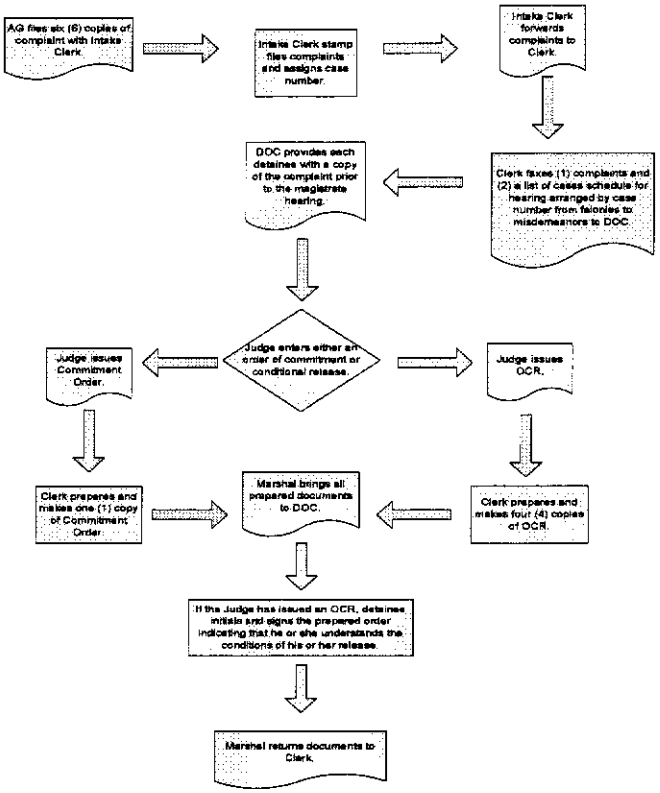
- The court may order that the interpreter be located next to the detainee during the hearing. Generally, however, the interpreter will be located in the courtroom.
- If an interpreter is necessary to explain the conditions of release contained in an OCR, one will be made available to meet with the detainee 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 court room or at DOC.

ATTACHMENT "B"

FLOWCHART



CONTACT NUMBERS:

	TELEPHONE	FAX
Presiding Judge Lamorena's Chambers	475-3410	477-1852
Hagåtña Detention Facility	475-0180	472-3919
Mangilao Detention Facility (Female)	734-4035 / 734-3981	
Mangilao Detention Facility (High Risk Males)	734-3981	

ATTACHMENT "C"

IN THE SUPERIOR COURT OF GUAM

THE PEOPLE OF GUAM	)	Criminal Case No. _____
	)	
vs.	)	
	)	**ORDER OF CONDITIONAL RELEASE**
	)	**AND APPEARANCE BOND**
	)	
Defendant(s).	)	
_____	)	

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

_____ ☐ **1.** ***BAIL*:$**_____

CASH/SECURED - UNSECURED/PR BOND must be posted before Defendant is released, which amount shall be forfeited in its entirety if Defendant fails to make any court appearance or violates any of the terms of this Release Order. As a condition of the Defendants release on this bond pursuant to Chapter 40 of the Criminal Code of Guam, it is understood and agreed that the Defendant must appear in person in the above-entitled Court in accordance with any and all directions and orders relating to his/her appearance in the above-entitled matter, as may be given or issued by the Court or any Judicial Officer thereof.

_____ ☐ **2.** ***APPEARANCES*:** Defendant is ordered to appear next on _____, 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, by letter, or otherwise, 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 victim's 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). Defendant must be accompanied by Third-Party Custodians at all times.

Signature:

1. _____ **Tel.** _____

2. _____ **Tel.** _____

_____ ☐ **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 or surrendered to the Probation Office. Probation or the Guam Police is authorized to search Defendant's person, residence, or vehicle for firearms/weapons.

_____ ☐ **9.** ***ALCOHOL/DRUGS*:** Defendant shall not possess, and/or consume any alcoholic beverages and/or illegal controlled substances. Defendants 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 Office or the Guam Police are authorized to search Defendant's residence, vehicle, or person for alcoholic beverages and/or illegal controlled substance(s). Defendant shall not enter any alcohol establishment(s).

_____ ☐ **10.** ***CO-DEFENDANTS/FELONS*:** Defendant shall have no contact with co-defendant(s) either in person, by telephone, by letter, 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 work day following their release from custody.**

TO ALL PEACE OFFICERS: This ORDER shall be enforced by all Peace Officers.

SO ORDERED this _____ day of _____, 20 _____ .

_____

HONORABLE JUDGE
Superior Court of Guam

ORDER OF CONDITIONAL RELEASE
Defendant: _____
Criminal Case No. _____

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/she 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. Violation of this Order, may subject Defendant to federal charges and punishment. 18 U.S.C. §§ 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. § 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. § 22.

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 or 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 the 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.

Defendant Name: _____

Residential Address: _____

_____

City, State and Zip Code: _____

Telephone No.: _____

_____ _____
DATE DEFENDANT SIGNATURE

Territory of Guam)
ss:)
Hagåtña, Guam)

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

_____
Deputy Clerk/Marshal

Mediation Pilot Program

MR 4.1. Interim Rules for the Mediation Pilot Program for Superior Court of Guam Civil Actions.[1, 2]

MR 4.1.1. Administration.

The Mediation Pilot Program for Civil Actions ("Civil Pilot Program") shall be administered on a case-by-case basis by the Judge assigned to each civil case that may become enrolled in the Civil Pilot Program.

MR 4.1.2. Policy, Purpose and Application.

(a) It shall be the policy of the courts of Guam to encourage the peaceable resolution of disputes and early settlement of pending litigation and to identify cases appropriate for referral to mediation pursuant to the guidelines set out in these Rules.

(b) The purpose of the Civil Pilot Program is to determine the effects of mediating larger numbers of cases early in the litigation process. It is hypothesized that the Civil Pilot Program will lead to earlier disposition of civil cases, with higher participant satisfaction.

(c) These Rules shall apply only to those civil cases in the Superior Court of Guam, and parties to such cases, enrolled in the Civil Pilot Program.

MR 4.1.3. Selection of Cases for Pilot Program.

(a) Each judge of the Superior Court of Guam shall review all civil files assigned to them and make a preliminary determination of which civil actions are appropriate for referral to mediation, giving consideration to such factors as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interests of the parties, the availability of mediation, and the likelihood of settlement by a mediator.

The cases selected shall be preliminarily referred to the Civil Pilot Program by the assigned judge and an order shall issue indicating that the case has been preliminarily selected for inclusion in the Civil Pilot Program.

(b) Parties who are preliminarily referred to the Civil Pilot Program shall serve and file an early mediation Status Conference Statement with the Superior Court of Guam within fifteen (15) days of the filing of the order preliminarily referring the case to the Civil Pilot Program. This Status Conference Statement shall include a discussion of the appropriateness of the case for referral to mediation. If a party believes a case should be removed from the Civil Pilot Program, they shall include in the Status Conference Statement an express Request to Remove which shall include a summary of the facts which support their contentions. The assigned judge who preliminarily referred a case to the Civil Pilot Program shall make all final determinations regarding such referral and may hold a conference on the issue of the referral at his or her discretion.

MR 4.1.4. Referral for Mediation.

(a) Within fifteen (15) days of the deadline for the parties to file the Status Conference Statements required by these Rules, the relevant assigned judge shall issue an order either referring the case to mediation or stating that the case is not appropriate for mediation and referring it back to the assigned judge. An order referring a case to mediation shall do so as provided herein:

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[1] Pursuant to Supreme Court of Guam Promulgation Order Nos. 06-005-01 and 06-005-02 in Supreme Court Case No. PRM 06-005, the Court adopted and promulgated the following *Interim Rules for the Mediation Pilot Program for Civil Actions* as Rule 16 of the Rules of the Superior Court of Guam. These Interim Rules shall be in effect, pursuant to Promulgation Order 06-005-02, for a six (6) month period following January 19, 2007, unless otherwise ordered by the Supreme Court of Guam.

[2] **SOURCE:** Adopted as Interim Rule 16 of the Rules of the Superior Court of Guam by Promulgation Order No. 06-005-01 (July 20, 2006), extended and amended by Promulgation Order No. 06-005-02 (Jan. 19, 2007).

(1) For actions in which the amount in controversy is greater than fifty thousand dollars ($50,000.00), the matter shall be referred to the Guam International Arbitration Center ("GIAC").

(2) For actions in which the amount in controversy is fifty thousand dollars ($50,000.00) or less, the matter shall be referred to Inafa' Maolek.

(b) If an order refers a case to mediation, the order shall include contact information for the parties as well as the name, address and telephone number of the mediation organization designated by the court. Further, the order may include the date and time of the first mediation conference and may stay the Superior Court case pursuant to Rule 6. The respective mediation organization shall appoint a qualified mediator as provided herein and shall issue a scheduling order.

(c) If the parties reach either an entire or partial agreement, notice of the agreement shall be filed with the court by the mediator consistent with Rule 8 herein. If the parties fail to reach an agreement, the parties shall first determine if successive mediation is appropriate, and if so, they shall stipulate to successive mediation to be held within fifteen (15) days of the stipulation. The stipulation must be filed with the court. If, however, the parties determine that successive mediation is not appropriate, the mediator shall file a notice with the court indicating such and the parties shall return to court for a progress hearing. If the parties experience a breakdown of an existing mediation, the mediator shall file a notice with the court indicating such and the parties shall return to court for a progress hearing.

MR 4.1.5. Sanctions.

If a party or a party's attorney, absent good cause, fails to obey an order made pursuant to these rules, fails to appear at the scheduled mediation, or fails to participate in good faith, in accordance with program guidelines, the other parties shall report such circumstances to the court. The court may make such orders with regard thereto as are just within the discretion of the court, including requiring the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with these rules, including attorney's fees and mediator's fees; provided, however, the mediator shall not be called as a witness or otherwise be required to give evidence at a sanctions hearing. For purposes of this rule, good faith requires, but is not necessarily limited to, the following:

(1) Personal appearance by the parties, unless excused by the mediator;

(2) Appearance by counsel, if the party(s) is/are represented;

(3) Preparation by participants for the mediation, and willingness to listen to and consider statements of other participants and the mediator;

(4) Ability to articulate the basis for an unwillingness to change position during the mediation;

(5) Compliance with the format set out by the mediator; and

(6) Compliance with the procedures set forth in the Supreme Court of Guam's Interim Pilot Program Rules and any court orders relating to the mediation.

MR 4.1.6. Stay of Proceedings.

The court may, in the mediation referral order, stay all proceedings, actions, and discovery in the case for a specific or indeterminate period. Nothing herein precludes the parties from mutually agreeing to limited discovery during the mediation process.

MR 4.1.7. Conduct of Mediation Proceedings.

(a) Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures of the process. Non-party witnesses may be heard in the discretion of the mediator, and other non-parties shall be permitted to attend only with the consent of the parties and the mediator. Multiple sessions may be scheduled or held by the mediator based on the progress achieved in the mediation thus far or as agreed between the parties and the mediator.

(b) Except as otherwise provided by these Rules, the court may require the parties to attend a mediation session at any time following the filing of a complaint.

(c) The attorneys for all parties must appear at the mediation unless otherwise ordered by the court or mediator. Each party including a person with authority to settle the case on the party's behalf shall be present during the mediation unless otherwise ordered by the court or mediator.

MR 4.1.8. Filing of Statement by Mediator.

(a) Within 10 days of the conclusion of the mediation, the mediator shall file a written statement advising the court whether the parties to the mediation reached an entire agreement, partial agreement, or no agreement. This written statement shall state:

(1) Whether the parties have agreed that an order of the court shall be entered confirming their agreement;

(2) Whether the parties have requested dismissal of the complaint initiating the case;

(3) Whether the parties have agreed to terminate the mediation proceedings initiated by the complaint; or

(4) Whether the mediator finds that the continuation of mediation proceedings has for any other reason become unnecessary or impossible.

(b) If the parties reach a written agreement, notice of such written agreement shall be included in the mediator's written statement to the court.

MR 4.1.9. Confidentiality.

Except as otherwise provided by this Rule and unless the parties otherwise consent, no disclosure made by a party during mediation shall be admitted as evidence against that party in any civil, criminal, or quasi-criminal proceeding. A party may, however, establish the substance of the disclosure in any such proceeding by independent evidence. A mediator has the duty to disclose to a proper authority information obtained at a mediation session on the reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm. No mediator may participate or be required to participate in any subsequent hearing or trial of the mediated matter or appear as witness or counsel for any person in the same or any related matter.

MR 4.1.10. Qualifications of Mediator.

The Chief Justice of the Supreme Court shall approve all mediators who are contracted by service providers to perform mediation services pursuant to service provider agreements. The Supreme Court may establish additional qualifications required for a mediator, including training and experience requirements, from time-to-time during the Civil Pilot Program as it deems necessary and appropriate.

MR 4.1.11. Standards of Conduct for Mediators.

The ethical standards applicable to mediators providing mediation services under this court referred mediation program shall be the Model Standards of Conduct for Mediators, attached hereto as Appendix A and incorporated by this reference.

MR 4.1.12. Compensation of Mediators.

Parties assigned to mediation pursuant to this Rule shall equally share the fees and expenses of the mediator on an ongoing basis, subject to court review and allocation to create equity. Any and all fees to be charged the parties for mediation under this Civil Pilot Program shall be in accordance with Appendix B for mediation services referred to GIAC and Appendix C for mediation services referred to Inafa' Maolek. The court shall not be responsible for the collection or payment of any mediation fees or costs. Compensation shall be made directly

to the mediator and/or mediator organization. Failure to pay the mediator or mediator organization may result, upon motion or application, in an order by the court to pay and imposing appropriate sanctions.

MR 4.1.13. Mediation Pilot Program Data Collection Requirements.

All parties, counsel and mediators participating in the Pilot Program shall complete any questionnaires provided to them by the mediator, mediator organization, the relevant assigned judge or the Supreme Court.

APPENDICES TO INTERIM RULE 4.1

A. Model Standards for Conduct of Mediators

B. GIAC Fee Schedule

C. Inafa' Maolek Fee Schedule

APPENDIX A

MODEL STANDARDS FOR CONDUCT OF MEDIATORS

INTRODUCTORY NOTE

The initiative for these standards came from three professional groups: The American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

The purpose of this initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it – a beginning, not an end. The model standards are intended to apply to all types of mediation. It is recognized, however, that in some cases the application of these standards may be affected by laws or contractual agreements.

PREFACE

The model standards of conduct for mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, organizations, and institutions involved in mediation.

Mediation is a process in which an impartial third party — a mediator — facilitates the resolution of a dispute by promoting voluntary agreement (or "self-determination") by the parties to the dispute. A mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. These standards give meaning to this definition of mediation.

I. Self-Determination: A Mediator shall recognize that mediation is based on the principle of self-determination by the parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

Comments

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.
- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

II. Impartiality: A Mediator shall conduct the mediation in an impartial manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

Comments

- A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics,

background or performance at the mediation.

III. Conflicts of Interest: A Mediator shall disclose all actual and potential conflicts of interest reasonably known to the Mediator. After disclosure, the Mediator shall decline to mediate unless all parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

Comments

- A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.
- Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

IV. Competence: A Mediator shall mediate only when the Mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

Comments

- Mediators should have information available for the parties regarding their relevant training, education and experience.
- The requirements for appearing on a list of mediators must be made public and available to interested persons.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

V. Confidentiality: A Mediator shall maintain the reasonable expectations of the parties with regard to confidentiality.

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

Comments

- The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.
- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, observations of live mediations, and interviews with participants.

VI. Quality of the Process: A Mediator shall conduct the mediation fairly, diligently, and in a manner consistent with the principle of self-determination by the parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.

Comments

- A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.
- The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.
- The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.
- A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial.

- A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

VII. Advertising and Solicitation: A Mediator shall be truthful in advertising and solicitation for mediation.

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

Comments

- It is imperative that communication with the public educate and instill confidence in the process.
- In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

VIII. Fees: A Mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties.

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

Comments

- A mediator who withdraws from a mediation should return any unearned fee to the parties.
- A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
- Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.
- A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

IX. Obligations to the Mediation Process: Mediators have a duty to improve the practice of mediation.

Comment

- Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

APPENDIX B

GIAC FEE SCHEDULE

The following fees apply to any mediation services conducted by or at the Guam International Arbitration Center, LLC. All amounts are in U.S. dollars.

1. Mediator Fee: $200.00 per hour
2. Administrative Fees:

   The administrative functions performed by GIAC shall be subject to the following per-day fee schedule. Any portion of a day will result in a full-day charge. If an off-island mediator is selected by the parties, the mediator's travel expenses, accommodations and per diem will be equally borne by the parties. Requested services such as transcription, translation, and reproduction will be obtained by GIAC for the parties but the costs for such services will be the separate responsibility of the parties.

AMOUNT OF CLAIM	*FEE*
$50,001 TO $100,000	$100
$100,001 TO $250,000	$150
$250,001 TO $500,00	$200
$500,001 TO 1,000,000	$350
$1,000,001 TO $10,000,000	$500
OVER $10,000,000	As determined by GIAC

APPENDIX C

INAFA' MAOLEK FEE SCHEDULE

The following fees apply to any mediation services conducted by or at Inafa' Maolek during the Mediation Pilot Program for Civil Actions. All amounts are in U.S. dollars.

1. Mediator Fee:
   a. For cases involving less than $25,000: Each disputant shall pay $100 per session.
   b. For cases involving $25,000 to $50,000: Each disputant shall pay $125 per session.
      * For purposes of this fee schedule, a "mediation session" is defined as time spent by a mediator together with the parties, up to a maximum of three hours, attempting to resolve the case.
2. Administrative Fees:

   Requested services such as transcription, translation or reproduction may be obtained by Inafa' Maolek for the parties but the costs for such services will be the separate responsibility of the parties.

Small Claims

NOTE: The Judicial Council has *not yet* amended this Rule to conform with P.L. 20-28 (6/13/1989) which makes the Small Claims Division of the Superior Court.

MR 5.1. Small Claims Procedure.

Notwithstanding any other provisions of the rules of procedure, the plaintiff may, if the plaintiff so chooses, follow the procedure as set out in this rule in all cases for the recovery of money, only where the amount does not exceed $1,000.00.

(a) Action Commenced by Affidavit. Action shall be commenced, heard and determined under the provisions of this rule as hereinafter provided whenever any person executes the affidavit in the form set forth in Form No. 1(a) following, and files the same with the Clerk of the Superior Court. Forms will be furnished by the Superior Court. On the reverse side of such affidavit there shall be a summons form as set forth in Form No. 1(b) following.

(b) Preparation and Filing of Affidavit: Summons: Service. The claimant shall file such an affidavit as set forth in Form No. 1(a) following, together with one copy. At his request, the clerk may draft the same for him. Such affidavit may be presented by the claimant in person or sent to the clerk by mail. Upon the receipt of said affidavit, properly sworn to, the clerk shall file the original.

At the same time, the clerk shall fill in the blanks in the summons on the copy, sign the summons, and immediately thereafter shall cause the copy with summons to be served by the Marshal upon the defendant. The clerk shall then attach to the original affidavit the Marshal's return of service.

(c) Time for Appearance: Order for Plaintiff to Appear and Prove Claim: Application for New Order for Appearance of Defendant. The date for the appearance of the defendant as provided in the summons endorsed on the affidavit shall not be more than 30 days nor less than 20 days from the date of said summons. When the clerk has fixed the date and time for the appearance of the defendant, he shall inform the plaintiff of said date and time, order the plaintiff to appear and to have with him his books, papers and witnesses necessary to prove his claim. If the summons is not served upon the defendant at least five days prior to the appearance date, the court must, upon request of an appearing defendant, continue the date of hearing for not less than ten days, and in such case, the clerk shall inform the plaintiff of the new date set for hearing. If the summons is not served upon the defendant prior to the appearance date, the plaintiff may apply to the judge or clerk for a new summons setting a new date for the appearance of the defendant which shall not be more than 30 days nor less than 20 days from the date of the new summons.

(d) Court Records. The clerk shall establish and maintain a Small Claims Division docket and enter therein:

(1) The title of every action;

(2) The sum of money claimed;

(3) The date of the issuance of the summons;

(4) The judgment of the court and when returned; and

(5) The date of the receipt of a motion for a new trial, if any be filed, and the payment of the fee.

(e) Assignee May Not Sue. No claim shall be filed or presented by the assignee of such claim, unless assignee is an attorney admitted to practice law in Guam and the assignor is not a resident of Guam.

(f) Right of Parties to Appear in their Own Behalf: Right of Parties to Offer Evidence: Investigation by Judge: Judgment and Orders: Judgment Against Separate Defendants: Representation by Employee: Attorney Fees. In any proceedings under this rule plaintiffs and defendants shall be encouraged to appear on their own behalf. The plaintiff and defendant shall have the right to offer evidence in their behalf by witnesses. The judge or a commission appointed by the court for such purpose may also informally make any investigation of the controversy between the parties either in or out of court. The judge may give judgment and make such orders as to time of payment or otherwise as may, by him, be deemed to be right and just and, in an action against several defendants, may, in his discretion, give judgment against one or more of them, leaving the action to proceed against the others, whenever a separate judgment is proper. In proceedings under this rule, and only under this rule, corporations and partnerships may be represented by a full-time employee thereof who is not an attorney, provided that no collection agency, or agent, or employee thereof, or an employee of a party who is paid under the basis of a percentage of the amount he collects may appear on behalf of the interest of another person. Fee for representation by an attorney recoverable as prevailing party cost shall be limited to ten percent (10%) of the amount in controversy.

(g) Pleadings; Counterclaim; Form. No formal pleading, other than the affidavit and summons, shall be necessary and the hearing and disposition of all such actions shall be informal, with the sole object of dispensing speedy justice between the parties. The defendant in any such action may file a verified answer stating any new matter which shall constitute a counterclaim; a copy of such answer shall be delivered to the plaintiff in person not later than 48 hours prior to the hour set for the appearance of the defendant in such action. The applicable provisions of the Rules of Civil Procedure of the Superior Court relating to counterclaims is hereby made applicable to the Small Claims Division of the Superior Court except as herein provided. Such answer shall be made upon the form set out in Form No. 2 following.

(h) Process. No attachment prior to judgment shall issue from the Small Claims Division, but execution, upon order of the court, may issue in the manner prescribed in Chapters I and II of Title IX, Part II, of the Code of Civil Procedure, and upon the payment of the fees allowed for such service, the Marshal of the Superior Court is charged with the performance of the duties imposed upon him by such title.

(i) Payment of Judgment. If the judgment be against the defendant, or against the plaintiff upon the defendant's counterclaim, such judgment shall be paid forthwith or at the time and upon such terms and conditions as the judge may prescribe.

(j) Motion for New Trial. The judgment of the court shall be conclusive upon the plaintiff upon the claim and upon the defendant upon the counterclaim, but if the defendant as to the claim or the plaintiff as to the counterclaim is dissatisfied, he may, within ten days of the entry of the judgment against him, make a motion for a new trial. Upon the filing of such motion for a new trial, the moving party shall pay the same fees as are charged for the filing of an original action in the Superior Court.

(k) Statement on Motion for a New Trial. The motion for a new trial shall be filed by completing Form No. 3 following, and filing the same with the clerk. The clerk shall thereupon enter the case in the regular docket of the Superior Court.

(l) Trial De Novo. Upon the payment of the filing fee and the completion and filing of the form set forth in subsection (k), the right to a new trial is absolute and a trial de novo shall be

granted in the Superior Court under the rules of the Superior Court excepting that no further pleadings shall be required of either party.

(m) Abstract of Judgment. If no motion for a new trial is filed and the prevailing party is not paid the amount of the judgment according to the terms and conditions thereof, the clerk shall, upon application by the prevailing party, certify such judgment in the form set forth in Form No. 4 following.

(n) Fees.

Note: Adopted October 24, 2003, effective, December 01, 2003, by Promulgation Order No. 03-008, Supreme Court of Guam. Repealed December 22, 2003, by Promulgation Order No. 03-012. Re-instituted April 30, 2004, effective, July 1, 2004, by Judicial Council Resolution No. JC04-010. [Pursuant to P.L. 27-031, the Supreme Court shall now defer matters pertaining to court fees to the Judicial Council]

1. Small Claims Schedule of Fees
   (Based on Claim Amount)

   A. Initial Claim Amount

$ 500.00	$20.00
$ 501.00 - $ 2,000.00	$30.00
$2,001.00 - $ 3,500.00	$40.00
$3,501.00 - $ 5,000.00	$50.00
$5,001.00 - $ 6,500.00	$60.00
$6,501.00 - $ 8,000.00	$70.00
$8,001.00 - $ 9,500.00	$80.00
$9,501.00 - $ 10,000.00	$90.00

2. Small Claims Schedule of Fees.

A.	Summons	$ 4.00
B.	Judgment Debtor Examination	$10.00
C.	Order to Show Cause	$10.00
D.	Writs	$15.00
E.	Confession of Judgment	$15.00
F.	Abstract of Judgment	$ 5.00
G.	Motion / Joinder for Summary Judgment	$20.00
H.	Counterclaim (Same as Initial Filing Claim)	
I.	Any Motion Requiring a Hearing, Stipulation or Litigant Requesting to Continue Hearing	$10.00

3. Amended Declaration:

   A. If amended claim amount does not exceed the initial claim amount, no fee is required.
   B. If amended claim amount exceeds the initial claim amount, filing fee will be based on the difference of the claim.
   C. If amendment is to add a defendant(s),

fee is assessed as in summons.

D. Any other amendments, no fee is required.

(o) Costs. The prevailing party in any action under this rule is entitled to costs of the action and also the costs of execution upon a judgment rendered therein.

(p) Title. This rule may be known and cited as the Small Claims Court Rules.

(q) Effective Date. These rules shall not take effect until they have been reported to the Legislature by the Chairman of the Judicial Council at of after the beginning of a regular session thereof, but not later than the first day of May, 1969, and until the expiration of ninety days after they have been thus reported. [Original Rules effective July 31, 1969.]

SOURCE: GRCP Rule 92; amended effective December 17, 1980; amended effective April 6, 1985. Subsection (d) amended by Bar Committee.

SMALL CLAIMS FORMS

Small Claims No. 1(a)

In the Small Claims Division
of the Superior Court of Guam
Territory of Guam

_____	)	
Plaintiff,	)	
	)	
	)	No. _____
	)	
_____	)	
Defendant,	)	

Territory of Guam	)	
	)	ss:
Municipality of Agana	)	

_____, being duly sworn, deposes and says: That the defendant is indebted to the plaintiff in the sum of $_____, resulting from [here insert nature of cause of action; i.e, contract, debt, injury to person or property, etc.]; that this affiant has demanded payment of said sum; that the defendant refused to pay the same, and no part thereof has been paid excepting the sum of $_____; that the defendant resides at _____; in the territory of Guam (or, "that the obligation sued on was contracted to be performed at _____ in the Territory of Guam"); that the affiant resides at _____ _____ _____ in the Territory of Guam.

_____

Subscribed and sworn to before this ____ day of _____, 19____.

_____
Judge, Clerk, or Notary Public

Small Claims No. 1(b)

In the Small Claims Division
of the Superior Court of Guam
Territory of Guam

_____, Plaintiff,	)	
	)	No. _____
	)	SUMMONS
Defendant,	)	

The Territory of Guam to the within named defendant, greetings:

You are hereby directed to appear and answer the within and foregoing claim as set forth in the reverse hereof on the courtroom located in the Courthouse Building,, Agana, Guam, on the _____ day of _____, 19__, at the hour of _____ o'clock in the _____noon of said day; and to have with you, then and there, all books. papers and witnesses needed by you to establish your defense to said claim.

You are further notified that in case you do not appear, judgment may be given against you for the amount of said claim as it is stated in the affidavit, and in addition, costs of the action including costs of service of the order.

Dated this _____ day of _____, 19____.

_____
Clerk, Superior Court of Guam

Small Claims No. 2

In the Small Claims Division of the
Superior Court of Guam
Territory of Guam

	)	
Plaintiff,	)	
	)	
	)	No. _____
	)	COUNTER-CLAIM
	)	OF DEFENDANT
	)	
Defendant,	)	
Territory of Guam	)	
	) ss	
Municipality of Agana	)	

_____, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of $_____ for [here insert nature of cause of action; i.e, contract, debt, injury to person or property, etc.]; which amount the defendant prays may be allowed as a counterclaim against the claim of the plaintiff.

_____

Subscribed and sworn to before this ____ day of _____, 19____.

_____
Judge, Clerk, or Notary Public

Small Claims No. 3

In the Small Claims Division of the
Superior Court of Guam
Territory of Guam

_____,	)	
Plaintiff,	)	
	)	
	)	No. _____
	)	MOTION FOR A
	)	NEW TRIAL
_____,	)	
Defendant,	)	

Comes now the plaintiff/defendant (strike out one) and moves for a new trial from the judgment of the above-entitled court in the above- entitled action.

Dated this _____ day of _____, 19__.

_____
Appellant

Small Claims No. 4

In the Small Claims Division of the
Superior Court of Guam
Territory of Guam

_____,	)	
Plaintiff,	)	
	)	
	)	No. _____
	)	
_____,	)	
Defendant,	)	

ABSTRACT OF JUDGMENT

In the above-entitled court and action, based on the _____ day of _____, 19__, judgment was entered for plaintiff (or for defendant on his counterclaim) for $_____ and no motion for new trial having been perfected, the judgment is therefore final.

Dated this ____ day of _____, 19___.

_____
Clerk, Superior Court of Guam

Records Retention

MR 6.1. Records Retention.

(a) Definition. For the purpose of this Rule finality means the 31st day after the entry of judgment or order from which an
appeal may lie, receipt of the mandate from an appellate court affirming a judgment or order or the 31st day after the court has dismissed an action for failure to prosecute.

(b) Microfilming and Destruction. Records listed below shall be microfilmed at or after finality and the originals destroyed, or, in case of evidence, returned to the owners according to law, in accordance with the disposition table below.

RECORD DESC.	FILING METHOD	DISPOSITION
CLERK'S OFFICE		
Client Case Files	Numerically	
1. Civil cases		Destroy originals 10 years after finality.
2. Small Claims		Destroy 5 yrs. after filing on microfilm.
3. Juvenile Cases		Records expunged when client becomes 18 yrs old; 10 yrs. hence, destroy in accord with 19 GCA 5124.
4. Domestic		Destroy cases 10 yrs. after finality; provided that cases with minor children not final until 10 years after youngest becomes 18.
5. All others		Destroy 10 yrs. after finality.
Client Cardex File	Alphabetically	Permanent
Docket Sheets & after micro-	Numerically	Perm., transfer to storage 1 yr.after finality filming.
Wills	Numerically	Permanent
Permanent Exhibits	By Subject	
1. Criminal		Transfer to proper law enforcement dept. after final judgment.
2. Civil		Return to submitting party after final judgment.
Decision Files	Chronological	Permanent

RECORD DESCRIPTION	FILING METHOD	DISPOSITION
Fee Collection year.	Chronological	Transfer to Reports Fin. Mgmt. Div. after 1
Jury records, 22121. diskettes	Numerical/ chronological	Destroy after incl. 5 yrs. as per 7 GCA
Crim. appeal transcripts	Numerical	Destroy 19 yrs. After finality.
Correspondence; subj. files re: admin. & clerk's office w/no historical or legal value.	Subject	Destroy after 3 years.
CALENDAR UNIT		
Master calendar diary	Subject	Destroy after 3 years.
Statistical reports	Subject/ chronological	Destroy after 3 years.
Computer aids/manuals	Subject	Destroy when no longer useful.
COURT REPORTER'S UNIT		
Tapes of court hearings & proceedings-	Subject	Permanent; transfer to storage after 1 yr; destroy after 10 yrs.
Stenographic	Subject	Per,.; trans. notes to storage after 1 year
Grand Jury minute sheets	Numerical	Perm., microfilm

RECORD DESC.	FILING METHOD	DISPOSITION
Correspondence; subj. files re: admin. & oper. of court reporting with no historical or legal value.	Subject/ chronological	Destroy after 3 years.

SOURCE: Guam Bar Committee.

COMMENT: The Superior Court has been faced with questions of storage and disposal of records without any law or rule for guidance. This Rule provides necessary guidance, in accordance with applicable law, for the storage and disposal of all the papers accumulated by the court.

CROSS-REFERENCES: Public Law 22-124 enacted 7 GCA §7120, which provided the statutory guidance which was lacking when this Rule was adopted. Section 7120(d) confirmed and continued this Rule under it may be changed in due course.