

**PROPOSED REVISIONS TO
RULES GOVERNING PROTECTION ORDER CASES**

POR 1 Protection Order Cases.

These rules govern all cases involving orders of protection available under Title 7 Chapters 40, 40A, and 40B of the Guam Code Annotated. Protection order cases are separate and distinct from all other matters.

The Forms attached to these Rules have been developed to assist litigants in filing Petitions and understanding the Protection Order process. The Committee to Revise the Protection Order Rules may convene from time to time to revise the forms in accordance with updated court practices and procedures, without notice. All forms shall be made available on the Court's website and in the Clerk's Office.

POR 2 Filing and Costs of a Petition for an Order of Protection.

A) Petition for Order of Protection

- 1) A Petition for an Order of Protection must be filed with the Clerk of Court at the Superior Court of Guam.
- 2) The party(ies) seeking relief must be designated as Petitioner(s) or Plaintiff(s), and the party(ies) answering the Petition must be designated Respondent(s) or Defendant(s).
- 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) Petition Costs. Petitions for an Order of Protection must be filed without cost. This fee exemption applies only to Petitions for Orders of Protection. Fees must be paid for related domestic, child custody, or child support actions, even if filed at the same time as the Petition for an Order of Protection.

SOURCE: 19 GCA § 14104; 7 GCA §§ 40103(d), 40A104, 40B104.

C) Clerk's Office. The Clerk's office must be open and available to assist any person seeking an Order of Protection Monday through Friday during regular business hours. Petitions filed after 3 p.m. may not be acted upon until the following business day.

POR 3 Petition; Notice; Hearings; Order of Protection.

A) **Petition.**

- 1) To obtain an Order of Protection, an applicant must file the following forms:
 - a) Petition for Order of Protection (Form 1)
 - b) Marshall's Service Information (Form 2), and
 - c) Non-Criminal Case Coversheet.
- 2) The Petition may indicate whether the Petitioner is seeking a Temporary Order of Protection for immediate relief.
- 3) The Petitioner must provide as much information regarding the identity of and contact information for the respondent as is known to Petitioner.

- 4) Within the Petition, the Petitioner may request to seal documents or submit them *in camera*.
 - 5) In examining the petition, the Court may consider publicly available records concerning the parties such as criminal history and other relevant court cases.
- B) **Notice.** Notice of the Petition is not required to be served on a Respondent until ordered by the court.
- C) **Hearings.**
- 1) **Initial Hearing.** After a review of the Petition, the court may opt to schedule a hearing whereby the petitioner responds to questions from the court.
 - 2) **Show Cause Hearing on Temporary Order of Protection or Final Order of Protection.**
 - a) The Court must set the matter for a Show Cause Hearing within ten (10) business days. The hearing may be continued as deemed necessary by the Court.
 - b) Upon issuance of a Temporary Order of Protection, the Court must also issue a Notice to Respondent.
 - c) If Respondent fails to appear at a Show Cause Hearing after being properly served and noticed, the case may proceed by default.
 - d) At a Show Cause Hearing or any subsequent evidentiary hearing, the Court may take testimony and evidence.
- D) **Order of Protection.** After taking testimony and evidence at the Show Cause Hearing, or upon receiving a consent by Respondent to an Order of Protection, the Judge may issue an Order of Protection for such periods as authorized by law. Any Order of Protection or approved consent agreement must be for a fixed period of time as the Court deems appropriate. The Court may amend its order or agreement at any time upon subsequent petition or motion filed by either party.
- E) **Mutual Restraining Orders.** A court may not issue a mutual restraining order unless the Court has made specific findings that each party was entitled to such an order, including findings of fact indicating that both parties acted primarily as aggressors and that neither acted primarily in self-defense.

SOURCE: 7 GCA §§ 40105(b), 40A106(e), 40B105(d); 18 USC § 2265(c).

POR 4 Relief.

The Court must grant relief in accordance with Chapters 40, 40A, and 40B of Title 7 of the Guam Code Annotated.

Copies of Orders to Show Cause and Protection Orders must be furnished to all parties at no cost.

SOURCES: 7 GCA §§ 40105(a); 40A106, 40B106.

POR 5 Service of Orders of Protection and Show Cause Orders

- A) Unless otherwise directed by the Court, the Marshals Division of the Superior Court of Guam must serve all Orders of Protection and Show Cause Orders.

- B) The Marshal must notify Petitioner and/or his/her attorney: (1) as soon as practicable that service has been accomplished; and (2) of non-service and the attempts to serve.
- C) If the Marshals Division has been unable to serve an Order to Show Cause after multiple attempts, the Petitioner may apply to serve the Order to Show Cause by publication pursuant to Guam Rule of Civil Procedure 4 and 7 GCA § 14106.

POR 6 Burden of Proof.

- A) Petitioner must prove by a preponderance of the evidence the allegations stated in the Petition.

SOURCE: 7 GCA §§ 40104(a), 40A106(a), 40B106(a).

- B) The Guam Rules of Evidence do not apply to applications for or hearings for Temporary Orders of Protection; however, the Guam Rules of Evidence are applicable to hearings for Permanent Orders of Protection.

POR 7 Violations; Contempt Proceedings.

- A) **Motion for Contempt.** A motion seeking to hold a party in contempt must be filed contemporaneously with an affidavit detailing the factual basis for the motion for contempt.
- B) **Contempt.** Upon a preliminary finding that a violation may have occurred, the Court must issue an Order to Show Cause and schedule a hearing. Notice of the hearing must be provided to the responding party within a reasonable time.
- C) **Contempt Hearing.** To make a finding of contempt, the Court must conduct an evidentiary hearing and evaluate if a contempt has occurred by a preponderance of the evidence.
- D) **Orders of Contempt.** If the Court finds the Respondent in contempt, the Court may impose sanctions pursuant to 7 GCA §§ 34101(b), 40A106(f), or 40B106(e), as applicable.

SOURCES: 7 GCA §§ 40109, 34101(a), (b), 34102; 9 GCA § 80.34; People v. Torres, 2008 Guam 26

POR 8 Firearms; Surrender of Firearms and/or Ammunition.

The Court may require a Respondent subject to any Order of Protection to immediately surrender all firearms and/or ammunition to the Marshals of the Court, or other law enforcement officers. Should firearms be seized, the Marshals shall keep an inventory of the seized items, have the Respondent fill out a Statement Re Firearms, Firearm Parts, Ammunition and Permit Registrations (Form 3), and file the Statement with the Court.

SOURCE: 18 U.S.C. § 922(g)(8) and (9).

POR 9 Enforcement of Orders of Protection.

- A) **Guam Orders of Protection.** Orders of Protection issued by the courts of Guam must be certified by the Clerk of the Superior Court of Guam and must be accorded full faith and credit in all jurisdictions in the United States, including territories, tribes and commonwealths.
- B) **Foreign Orders of 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 must 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 MR 2.1., must 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 must certify and forward a copy of the foreign order to the requesting party at no cost.

SOURCE: 19 GCA § 14105(c)(2).

POR 10 Protective Order Registry.

A) Registry. The Clerk of the Superior Court of Guam must maintain a registry of all orders of protection and restraining orders which are:

- 1) issued by the courts of Guam. Such orders must be included in the registry within 24 hours after they are 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 2.1.10(B)(1). Such orders must 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 must be available at all times to a court, law enforcement agency, and other governmental agency.

SOURCE: 19 GCA § 14106.