BEFORE THE 2006 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC 06-013

RELATIVE TO THE AMENDMENT OF JUDICIAL COUNCIL RESOLUTION JC 06-009 TO RECOGNIZE THE DISCRETION OF THE ADMINISTRATOR OF THE COURTS TO SUSPEND HAZARDOUS PAY FOR ANY CONDITION IDENTIFIED IN JC06-009 UPON THE ADMINISTRATOR OF THE COURTS DETERMINING THAT SUCH CONDITION HAS BECOME ORDINARY, CUSTOMARY OR ROUTINE

WHEREAS, Resolution JC 06-009 was adopted by the Judicial Council on April 6, 2006, a copy of which is attached hereto as Exhibit A, to expressly recognize certain hazardous conditions which Marshals, Probation Officers or Alternative Sentencing Officers might be subject to in the course of their duties as not being within their ordinary, customary or routine duties and therefore hazardous duty pay could be paid for such duty notwithstanding Public Law 28-68; and

WHEREAS, the determination of which hazardous duty conditions are not ordinary, customary or routine necessarily required an assessment of how often exposure to each hazardous duty condition occurs; and

WHEREAS, such determination is clearly subject to change due to changes that may occur in how the mandates of the Judiciary are carried out and, consequently, how the duties of Marshals, Probation Officers and Alternative Sentencing Officers are performed; and

WHEREAS, one example of such a change involves the security provided at the entrances to the Judicial Complex buildings in that full time Marshals are now stationed at those doors following the installation of the metal detectors whereas prior to their installation a private security company provided such security and thus it was not ordinary, customary or routine for Marshals to provide such security now and then to cover for the private security company but now it has become ordinary, customary or routine; and

WHEREAS, the administrative burden of returning to the Judicial Council to change the recognized list every time a recognized condition becomes commonplace and therefore ineligible for hazardous duty pay would be overly burdensome for all involved;

NOW THEREFORE BE IT RESOLVED that the Administrator of the Courts, in carrying out and implementing Judicial Council Resolution 06-009, must necessarily possess the discretion to determine when certain hazardous duty conditions that have been identified by the Judicial Council as non-ordinary, customary or routine have, in fact, become ordinary, customary or routine due to the regularity with which they are being performed by Marshals, Probation Officers or Alternative Sentencing Officers, Judicial Council Resolution JC06-009 is hereby amended to insert the following language immediately above the final "BE IT FURTHER RESOLVED" paragraph to state as follows:

"**BE IT FURTHER RESOLVED** that the Administrator of the Courts has the discretion to deny and suspend payment of hazardous duty pay for any of these recognized hazardous conditions for Marshals, Probation Officers or Alternative Sentencing Officers upon making a determination that exposure to such hazardous condition(s) has become ordinary, customary or routine; and although if such a determination is made by the Administrator of the Courts such shall be express and in writing and written notice of such determination shall be promptly provided by the Administrator of the Courts to the Judicial Council through its secretary and the issue shall be heard and addressed by the Judicial Council for informational and ratification purposes no later than the second regularly scheduled Judicial Council meeting following the date on which such written determination is made by the Administrator of the Courts; however if any hazardous duty conditions are to be added to the eligible list such must be done by the Judicial Council; and"

BE IT FURTHER RESOLVED that, although such ratification is not necessary regarding future determinations by the Administrator of the Courts, the Administrator of the Courts' decision to suspend hazardous duty pay for Marshals for providing security at the entrances to the Judicial Center from and after the date on which the metal detectors were installed due to the fact that such duty has become ordinary, customary or routine was sound and proper.

DULY ADOPTED this 8th day of June, 2006 at a duly noticed meeting of the Judicial Council of Guam.

F. PHILIP CARBULLIDO
Chairman

Date: June 21, 2006

ATTEST:

ANNABELLE C. MAJILLO, Secretary

Date: June 21, 2006

BEFORE THE 2006 JUDICIAL COUNCIL OF GUAM
RESOLUTION NO. JC 06-009

RESTATED RESOLUTION RELATIVE TO RECOGNIZING THAT CERTAIN HAZARDOUS CONDITIONS MARSHALS, PROBATION OFFICERS OR ALTERNATIVE SENTENCING OFFICERS MAY BE EXPOSED TO IN THE COURSE OF THEIR EMPLOYMENT ARE NOT WITHIN THEIR ORDINARY, CUSTOMARY OR ROUTINE DUTIES AND RECOGNIZING THAT TITLE 4 GCA § 6222(a) PROVIDES ALL GOVERNMENT EMPLOYEES WITH HAZARDOUS DUTY PAY WHEN GUARDING PRISONERS REGARDLESS OF WHETHER SUCH DUTY IS WITHIN THEIR ORDINARY, CUSTOMARY OR ROUTINE DUTIES

WHEREAS, effective January 24, 1990 Public Law 20-132:2 amended Title 4 GCA § 6222 regarding subsection (b) thereto which allows payment of 10% hazardous pay for marshals, probation officers or alternative sentencing officers of the Superior Court of Guam when such officers' duty is under hazardous conditions as articulated by the Personnel Rules and Regulations of the Superior Court; and

WHEREAS, the government-wide Hay Study in the early 1990's, which resulted in the adoption of the unified pay scale recommended by the Hay Group through promulgation of Public Laws 21-58 and 21-59, considered only three factors in establishing the pay level of each government position, including peace officers of the Judiciary, those factors being know-how, problem solving & accountability, and thus did not take into account the potentially hazardous nature of each position in apparent recognition of the existence of various provisions of Guam law such as Section 6222 which already provided for such hazardous duty differential pay; and

WHEREAS, on June 29, 1995 the Judicial Council of Guam, through its Resolution Number 10-95 (a copy of Resolution 10-95 is attached hereto as Exhibit "A" and incorporated herein by this reference, together with its three-page attachment), amended Rule 9.32 of the Superior Court's Personnel Rules and Regulations regarding hazardous pay and specifically articulated eleven (11) hazardous conditions marshals may be exposed to and nine (9) hazardous conditions probation officers or alternative sentencing officers may be exposed to which would entitle such employees to hazardous pay; and

WHEREAS, within the eleven hazardous conditions Resolution 10-95 identified as those which marshals may be exposed, providing security at the Angela Flores building is mentioned; and

WHEREAS, such premises was previously leased by the Judiciary to house its Child Support Division but which lease and occupancy has now ceased rendering the Angela Flores reference obsolete and unnecessary; and

WHEREAS, effective October 1, 2005, notwithstanding the Judiciary's articulation within its Personnel Rules & Regulations of what hazardous conditions entitle its marshals, probation officers or alternative sentencing officers to hazardous pay, Section 6 of Chapter V of Public Law 28-68 amended Title 4 GCA § 6222(b) to expressly exclude from hazardous pay eligibility for marshals, probation officers or alternative sentencing officers of the Judiciary of Guam any hazardous conditions which are within their customary, ordinary or routine duties; and

WHEREAS, upon the effective date of Public Law 28-68 the Judiciary suspended the payment of all hazardous duty pay pending an internal analysis regarding the hazardous conditions articulated in the Judiciary's Personnel Rules and Regulations to determine which of those specific conditions are not within the customary, ordinary or routine duties of marshals, probation officers or alternative sentencing officers and thus may still be eligible for hazardous pay consistent with Public Law 28-68; and

WHEREAS, upon the effective date of Public Law 28-68, notwithstanding the suspension of payment regarding such hazardous duty, the Administrator of the Courts instructed the Judiciary's marshals, probation officers and alternative sentencing officers to continue documenting their hazardous hours as was done prior to the enactment of Public Law 28-68; and

WHEREAS, The Administrator of the Courts, with the assistance of the Human Resources Administrator, has completed a thorough analysis of the hazardous conditions for marshals, probation officers and alternative sentencing officers as articulated in Personnel Rule 9.32 regarding which hazardous conditions are not within the customary, ordinary or routine duties of marshals, probation officers or alternative sentencing officers; and

WHEREAS, notwithstanding Public Law 28-68's amendment of Title 4 GCA § 6222(b) regarding ordinary, customary or routine duties of marshals, probation officers and alternative sentencing officers, Title 4 GCA § 6222(a) provides that "any employee of the government who performs the duty of guarding prisoners shall be entitled to hazardous pay" thereby providing marshals, probation officers and alternative sentencing officers with hazardous duty pay for such periods of time that they are guarding prisoners regardless of whether such duty is within their ordinary, customary or routine duties; and

WHEREAS, the Judiciary Staff Attorney, in conjunction with the Marshal of the Courts and the Acting Chief Probation Officer, has reviewed the conclusions reached by the Human Resources Administrator as well as the applicability of Title 4 GCA § 6222(a) to periods of time during which marshals, probation officers or alternative sentencing officers are guarding prisoners regardless of whether such duty is within their ordinary, customary or routine duties and finds such conclusions to be sound and in order;

NOW THEREFORE BE IT RESOLVED, that Rule 9.32.01.01(c) of the Superior Court's Personnel Rules and Regulations is hereby **AMENDED** to omit the reference to the Angela Flores Building as the Judiciary no longer occupies any portion of that property and thus such subsection shall now read as follows:

"(c) A Marshal performs security duty by screening entrances and exits within the Judicial Center and Old Superior Court buildings during regular, swing and graveyard hours."

BE IT FURTHER RESOLVED, that the following subsections of Rule 9.32.01.01 regarding Marshals are not within the customary, ordinary or routine duties of marshals and thus may be the basis of hazardous pay consistent with Public Law 28-68 and therefore all properly documented hazardous duty from and after October 1, 2005 regarding such conditions shall be paid, subject to the availability of funds:

Rule 9.32.01.01 MARSHALS DIVISION

. . .

(c) A Marshal performs security duty by screening entrances and exits within the Judicial Center and Old Superior Court buildings during regular, swing and graveyard hours.

(d) A Marshal performs security for related monetary duties. (i.e., Cash runs and escorting of Financial Management Division personnel for bi-weekly payroll checks.)

. . .

(f) A Marshal participates in Special Operations such as Jury Sequestrations, Threats Against Judges, Bomb Searches, Evacuations and any other natural disasters.

(g) A Marshal who responds to first aid emergencies while on regular, swing or graveyard shift.

(h) A Marshal performs surveillance or stake-out of Warrant of Arrest of defendants.

(I) A Marshal conducts interviews of clients in a government detention facility. (i.e., Mental Health, Superior Court Cell, Department of Youth Affairs, Agana Lock-up, Rosario Detention, Department of Corrections or other Federal Government equivalencies)

. . .

(k) A Marshal, who at the approval of the Chief Marshal, assists all law enforcement agencies.

. . .

BE IT FURTHER RESOLVED, that the following subsections of Rule 9.32.01.02 regarding the Probation Division are not within the customary, ordinary or routine duties of probation officers or alternative sentencing officers and thus may be the basis of hazardous pay consistent with Public Law 28-68

and therefore all properly documented hazardous duty from and after October 1, 2005 regarding such conditions shall be paid, subject to the availability of funds:

Rule 9.32.01.02 PROBATION DIVISION

. . .

(c) A Probation Officer or Alternative Sentencing Officer performs surveillance or stake-out of possible probation violation on Juvenile Delinquent and Adult Cases.

(d) A Probation Officer or Alternative Sentencing Officer, who at the approval of the Chief Probation Officer, assists the Marshal Division in activities, the conditions of which entitles a Marshal to hazardous pay.

. . .

(h) A Probation Officer or Alternative Sentencing Officer who serves Petition for Revocation of Probation, Summons, Subpoena, Petition for Violation of Court-Order, Order to Show Cause, Notice of Hearing and Request to Appear.

(i) A Probation Officer or Alternative Sentencing Officer who under the orders or direction of a Judge, assists other agencies in complying with such order(s).

. . .

BE IT FURTHER RESOLVED that, pursuant to Title 4 GCA § 6222(a), regardless of whether such duty is ordinary, customary or routine, marshals, probation officers or alternative sentencing officers may receive hazardous duty pay for any periods of time during which they are guarding prisoners and therefore all properly documented hazardous duty for guarding prisoners from and after October 1, 2005 shall be paid, subject to the availability of funds.

DULY ADOPTED this 6th day of April, 2006 at a duly noticed meeting of the Judicial Council of Guam.

F. PHILIP CARBULLIDO, Chairman

Dated: 4/7/06

ATTEST:

ANNABELLE C. MAJILLO, Secretary

Dated: 4/7/06

BEFORE
THE GUAM JUDICIAL COUNCIL

RESOLUTION NUMBER 10-95

RELATIVE TO THE IMPLEMENTATION OF THE AMENDMENTS TO THE HAZARDOUS PAY POLICY FOR THE SUPERIOR COURT OF GUAM

WHEREAS, pursuant to 4 G.C.A. §6222(b), marshals, probation officers, and alternative sentencing officers are eligible to receive 10% hazardous pay for any duty considered to be under hazardous conditions as specified by the Superior Court of Guam's Personnel Rules and Regulations; and

WHEREAS, Rule 9.32 -- Hazardous Pay Differential of the Personnel Rules and Regulations, specified the conditions under which the marshals, probation officers, and alternative sentencing officers are entitled to receive hazardous pay; and

WHEREAS, the Human Resources Division, together with the Marshals Division and the Probation Division, have redefined the conditions under which marshals, probation officers, and alternative sentencing officers are entitled to receive hazardous pay; and

WHEREAS, the Court Staff Attorney has reviewed the amendments to the Hazardous Pay Policy and finds it to be in order.

NOW, THEREFORE, BE IT RESOLVED, that the Judicial Council hereby adopts and implements the attached Hazardous Pay Policy.

DULY AND REGULARLY ADOPTED THIS 29TH DAY OF JUNE, 1995.

HONORABLE ALBERTO C. LAMORENA III
(Presiding Judge)
Chairman

CALVIN HOLLOWAY
(Attorney General of Guam)
Member

SENATOR MARK C. CHARFAUROS
(Chairperson, Committee on Judiciary, Criminal Justice and Environmental Affairs) Member

(Absent)
ATTORNEY ROBERT J. TORRES
(President, Guam Bar Association) Member

EXHIBIT A

Exhibit "A"
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JC Res. # 10-95

SUBJECT: 2ND AMENDMENT TO SUPERIOR COURT PERSONNEL RULES AND REGULATIONS

Effective date of adoption: June 29, 1995 by the Judicial Council

REFERENCE: SUPERIOR COURT HAZARDOUS PAY Public Law 20-132

Public Law 20-41, as amended by Public Law 20-94 and further amended by Public law 20-132 extends a 10% hazardous pay entitlement to Superior Court Marshals, Probation Officers, and Alternative Sentencing Officers, when performing their duties under certain conditions. The Superior Court of Guam hereby amends the Superior Court Personnel Rules and Regulations by adding Rule 9.32 -- HAZARDOUS PAY DIFFERENTIAL.

RULE 9.32 -- HAZARDOUS PAY DIFFERENTIAL

9.32.01 -- Hazardous Conditions

9.32.01.01 -- MARSHALS DIVISION

Conditions which warrant a 10% hazardous pay differential for the Marshal Division occur if:

(a) A Marshal performs certain field services which include serving Warrants and Summons, Restraining Orders, and Order to Show Cause in Criminal, Civil, Small Claims, and Traffic Proceedings, the nature of which exposes the Marshal to hazardous situations;

(b) A Marshal performs security duty such as Jury Escorts, Judge Protections, Witness Protection; or when a Marshal is assigned to a particular courtroom, for particular security needs;

(c) A Marshal performs security duty by screening entrances and exits within the Judicial, Angela Flores, and Old Superior Court building during regular, swing and graveyard hours.

(d) A Marshal performs security for related monetary duties. (i.e., Cash runs and escorting of Financial Management Division personnel for bi-weekly payroll checks.)

(e) A Marshal performs the duty of escorting, transporting or guarding prisoners or arrestees.

(f) A Marshal participates in Special Operations such as Jury Sequestrations, Threats Against Judges, Bomb Searches, Evacuations and any other natural disasters.

(g) A Marshal who responds to first aid emergencies while on regular, swing or graveyard shift.

(h) A Marshal performs surveillance or stake-out of Warrant of Arrest of defendants.

(i) A Marshal conducts interviews of clients in a government detention facility. (i.e., Mental Health, Superior Court Cell, Department of Youth Affairs, Agana Lock-up, Rosario Detention, Department of Corrections or other Federal Government equivalencies)

(j) A Marshal who assists in serving revocation orders to clients; or

(k) A Marshal, who at the approval of the Chief Marshal, assists all law enforcement agencies.

Hazardous Pay Differential is calculated at the regular wage of the Marshal plus 10%. Implementation of pay differential will only be applicable when individual officer submits the attached form "Certification of Hazardous Pay Entitlement". In order to execute the above policy, officer must submit justification claiming that the nature of work is exposed to hazardous situation.

9.32.01.02 -- <u>Probation Division</u>

Conditions which warrant a 10% Hazardous Pay Differential for the Probation Division, occur if:

(a) A Probation Officer or Alternative Sentencing Officer conducts interviews and investigative work with his/her clientele at all government detention facilities, i.e., Mental Health, Superior Court Cell, Department of Youth Affairs, Agana Lock-up, rosario Detention, Department of Corrections or their Federal Government equivalencies;

(b) A Probation Officer or Alternative Sentencing Officer who performs the duties escorting guarding or transporting his/her clientele to destinations as ordered by the Courts; and upon the issuance and execution of Warrants of Arrest and Pick-up Order on Criminal and Juvenile Delinquent Cases;

(c) A Probation Officer or Alternative Sentencing Officer performs surveillance or stake-out of possible probation violation on Juvenile Delinquent and Adult Cases.

(d) A Probation Officer or Alternative Sentencing Officer, who at the approval of the Chief Probation Officer, assists the Marshal Division in activities, the conditions of which entitles a Marshal to hazardous pay.

(e) A Probation Officer, Alternative Sentencing Officer who has physical contact with those clients placed on probation or those clients who are pending disposition of their Juvenile or Adult Case.

(f) A Probation Officer who interviews a prospective Third Party Custodian for Bail hearings, receives and processes approved Third party Custodians firearms forfeiture, or conducts "Home Searches" on approved Third Party Custodian's residence or a client's residence.

(g) A Probation Officer who transports, collects or observes a Juvenile or Adult client submit to a drug or alcohol test.

(h) A Probation Officer or an Alternative Sentencing Officer who serves Petition for Revocation of Probation, Summons, Subpoena, Petition for Violation of Court-Order, Order to Show Cause, Notice of Hearing and Request to Appear.

(i) A Probation Officer or an Alternative Sentencing Officer who under the orders or direction of a Judge, assists other agencies in complying with said order(s).

Hazardous Pay Differential is calculated at the regular wage of the Officer plus 10%. Implementation of pay differential will only be applicable when individual officer submits the attached form "Certification of Hazardous Pay Entitlement". In order to execute the above policy, officer must submit justification claiming that the nature of work is exposed to hazardous situation.