

# **SUPREME COURT OF GUAM**

## **GUAM RULES OF APPELLATE PROCEDURES<sup>1</sup>** **(as of November 7, 2007)**

---

<sup>1</sup> Drafted by the Supreme Court Rules Commission September 13, 1993, approved by P.L. 23-34 (June 6, 1995); modified and approved by the Supreme Court of Guam en banc (July 15, 1996); amended July 27, 1999, September 2000, January 18, 2002, December 10, 2003, April 28, 2004; Dec. 23, 2004, Feb. 21, 2007, June 22, 2007, last amended November 7, 2007, pursuant to Promulgation Order No. 07-003-02.



**TABLE OF CONTENTS**

**APPLICABILITY OF RULES**

<b>Rule 1 --Effective Date of Rules, Scope and Practice.</b>	Page 1
<b>Rule 2 -- Suspension of Rules.</b>	1

**APPEALS FROM JUDGMENTS AND ORDERS OF THE SUPERIOR COURT**

<b>Rule 3 -- Appeals, Notice.</b>	1
(a) Filing the Notice of Appeal.	
(b) Joint or Consolidated Appeals.	
(c) Content of the Notice of Appeal.	
(d) Denomination of Parties.	
(1) Appeals.	
(2) Cross Appeals.	
(3) Confidentiality.	
(e) Service of the Notice of Appeal.	
(f) Criminal Appeals.	
<b>Rule 4 -- Appeals, Timing.</b>	4
(a) Appeal in a Civil Case.	
(1) Time for Filing a Notice of Appeal.	
(2) Filing before Entry of Judgment.	
(3) Multiple Appeals.	
(4) Effect of a Motion on a Notice of Appeal.	
(5) Motion for Extension of Time.	
(6) Reopening the Time to File an Appeal.	
(7) Entry Defined.	
(b) Appeal in a Criminal Case.	
(1) Time for Filing a Notice of Appeal.	
(2) Filing before Entry of Judgment.	
(3) Effect of a Motion on a Notice of Appeal.	
(4) Motion for Extension of Time.	
(5) Jurisdiction.	
(6) Entry Defined.	
(c) Appeal By an Inmate Confined in an Institution.	
(d) Mistaken Filing in the Court of Appeals.	
<b>Rule 4.1 -- Statement of Jurisdiction.</b>	7
(a) Requirements.	
(b) Reserved.	
(c) Effect of Failure to File.	
<b>Rule 4.2 -- Interlocutory Appeal by Permission.</b>	8
(a) Petition for Permission to Appeal.	

- (b) Contents of the Petition; Answer or Cross-Petition; Supporting Memorandum of Points and Authorities; Oral Arguments.
- (c) Form of Papers; Number of Copies.
- (d) Grant of Permission; Fees; Cost Bond; Filing the Record; Jurisdiction.

**Rule 5 -- Release in Criminal Cases.**

9

- (a) Release Entered Prior to a Judgment of Conviction.
- (b) Release Pending Appeal from Judgment of Conviction.

**Rule 6 -- Motions.**

10

- (a) In General.
  - (1) Application for Relief.
  - (2) Contents of a Motion.
    - (A) Grounds and Relief Sought.
    - (B) Accompanying Documents.
  - (3) Response.
    - (A) Time to File.
    - (B) Request for Affirmative Relief.
  - (4) Reply to Response.
- (b) Determination of Motions for Procedural orders.
- (c) Voluntary Dismissal.
  - (1) Voluntary Dismissal in the Superior Court.
  - (2) Voluntary Dismissal in the Supreme Court.
  - (3) Motions or Stipulations for Voluntary Dismissal of Criminal Appeal.
  - (4) Effective Date of Voluntary Dismissal.
- (d) Motions by Appellee for Dismissal of Criminal Appeal.
- (e) Required Recitals in Motions in Criminal Appeals.
- (f) Emergency Motions.
- (g) Form of Papers; Page Limits; and Number of Copies.
  - (1) Format.
    - (A) Reproduction.
    - (B) Cover.
    - (C) Binding.
    - (D) Paper Size, Line Spacing, and Margins.
    - (E) Typeface and Type Styles.
  - (2) Page Limits.
  - (3) Number of Copies.

**Rule 7 -- the Record on Appeal.**

12

- (a) Composition of the Record on Appeal.
- (b) The Transcript of Proceedings.
  - (1) Appellant's Duty to order.
  - (2) Unsupported Finding or Conclusion.
  - (3) Partial Transcript.
  - (4) Payment.
- (c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable.

- (d) Agreed Statement As the Record on Appeal.
- (e) Correction or Modification of the Record.

**Rule 7.1 -- Forwarding the Record.**

14

- (a) Appellant's Duty.
- (b) Duties of Reporter and Superior Court Clerk.
  - (1) Reporter's Duty to Prepare and File a Transcript.
  - (2) Superior Court Clerk's Duty to forward.
- (d) The Certificate of Record.
- (d) Retaining the Records by Court order.
- (e) Record for a Preliminary Motion in the Supreme Court.

**Rule 8 -- Docketing the Appeal and Filing a Representation Statement.**

15

- (a) Docketing the Appeal.
- (b) Filing a Representation Statement.

**Rule 9 -- Proceedings In forma Pauperis; Appointment of Counsel; Withdrawal As Retained or Appointed Counsel; Compensation.**

16

- (a) Leave to Proceed In forma Pauperis.
  - (1) Motion in the Superior Court.
  - (2) Action on the Motion.
  - (3) Prior Approval.
  - (4) Notice of Superior Court's Denial.
  - (5) Motion in the Supreme Court.
- (b) Leave to Proceed in forma Pauperis on Appeal or Review of an Administrative Agency Proceeding.
- (c) Leave to Use original Record.
- (d) Counsel on Appeal.
  - (1) Continuity of Representation on Appeal.
  - (2) Application for Indigent Status and Appointment of Counsel When Counsel Was Not Appointed in the Superior Court.
    - (A) Applicability.
    - (B) Waiver.
    - (C) Other Appeal.
  - (3) Withdrawal of Counsel after Filing Notice of Appeal.
  - (4) Compensation and Reimbursement for Court-Appointed Counsel.

**Rule 10 -- Filing and Service.**

20

- (a) Filing.
  - (1) Filing with the Clerk.
  - (2) Filing: Method and Timeliness.
    - (A) In General.
    - (B) A Brief or Excerpt.
    - (C) Inmate Filing.
    - (D) Electronic Filing.
  - (3) Clerk's Refusal of Documents.
- (b) Service of All Papers Required.
- (c) Manner of Service.

(d) Proof of Service.	
(e) Number of Copies.	
<b>Rule 11 -- Computing and Extending Time.</b>	21
(a) Computing Time.	
(b) Extending Time.	
(c) Additional Time after Service.	
<b>Rule 12 -- Stay or Injunction Pending Appeal.</b>	22
(a) Motion for Stay.	
(1) Initial Motion in the Superior Court.	
(2) Motion in the Supreme Court; Conditions on Relief.	
(3) Determination of Motion.	
(b) Proceeding against Surety.	
(c) Stay in Criminal Case.	
<b>Rule 13 -- Briefs.</b>	23
(a) Appellant's Brief.	
(b) Appellee's Brief.	
(c) Reply Brief.	
(d) Supplemental Brief.	
(e) Reference to Parties.	
(f) References to the Record.	
(g) Reproduction of Statutes, Rules, Regulations, Etc.	
(h) Briefs in a Case Involving Multiple Appellants or Appellees.	
(i) Citation of Supplemental Authorities.	
(j) Certificate as to Interested Parties.	
(k) Attorney's Fees.	
(l) Statement of Related Cases.	
(m) Consequences of Filing a Non-Conforming Brief.	
<b>Rule 13.1 -- Corporate Disclosure Statement.</b>	27
(a) Who Must File.	
(b) Time for Filing; Supplemental Filing.	
(c) Number of Copies.	
<b>Rule 13.2-- Cross-Appeals.</b>	27
(a) Applicability.	
(b) Designation of Appellant.	
(c) Briefs.	
(1) Appellant's Principal Brief.	
(2) Appellee's Principal and Response Brief.	
(3) Appellant's Response and Reply Brief.	
(4) Appellee's Reply Brief.	
(5) No Further Briefs.	
(d) Cover.	
(e) Length.	
(1) Page Limitation.	

(2) Type Volume Limitation.	
(3) <b>[A Brief submitted under Rule 13.2(E)(2) must comply with Rule16(A)(7)(D).]</b>	
(f) Time to Serve and File a Brief.	
<b>Rule 14 -- Brief of Amicus Curiae.</b>	29
<b>Rule 15 -- The Excerpts of Record.</b>	29
(a) Purpose.	
(b) Appellant’s Initial Excerpts of Record.	
(c) Required Contents of the Excerpts of Record.	
(d) Items not to be included in the Excerpts of Record.	
(e) Form of the Excerpts of Record.	
(f) Appellee’s Supplemental Excerpts of Record.	
(g) Further Excerpts of Record.	
(h) Presentence Report.	
(i) Sanctions for Failure to Comply with Rule 15.	
(j) Prisoner Appeals without Representation by Counsel.	
<b>Rule 16 -- Forms of Briefs, Appendices and Other Papers.</b>	32
(a) Form of a Brief.	
(1) Reproduction.	
(2) Cover.	
(3) Binding.	
(4) Paper Size, Line Spacing and Margins.	
(5) Typeface.	
(6) Type Styles.	
(7) Length.	
(A) Page Limitation.	
(B) Type-Volume Limitation.	
(C) Motion to Exceed Page or Word Limits.	
(D) Certificate of Compliance.	
(b) Form of Other Parties.	
(1) Motion.	
(2) Other Papers.	
(c) Signature.	
(d) Local Variation.	
<b>Rule 17 -- Filing and Service of Briefs.</b>	35
(a) Time for Serving and Filing of Briefs.	
(b) Number of Copies to be Filed and Served.	
(c) Motion for Extension of Time for Filing Brief.	
(d) Requirement of Timely Filing.	
(e) Consequence of Late Filing of Briefs and Failure to File Briefs.	
(1) Appellant.	
(2) Appellee.	
<b>Rule 18 -- Appeal Conferences.</b>	36
<b>Rule 19 -- Oral Argument.</b>	36

- (a) In General.
  - (1) Party's Statement.
  - (2) Standards.
- (b) Notice of Argument; Postponement.
- (c) Order and Contents of Argument.
- (d) Cross-Appeals and Separate Appeals.
- (e) Nonappearance of a Party.
- (f) Submission on Briefs.
- (g) Use of Physical Exhibits at Argument; Removal.

**Rule 20 -- Certified Questions.**

37

- (a) Superior Court.
- (b) Other Courts.
  - (1) Power to Answer.
  - (2) Method of Invoking.
  - (3) Contents of Certification Order.
  - (4) Preparation of Certification Order.
  - (5) Fees and Costs.
  - (6) Briefs and Argument.
  - (7) Opinion.
  - (8) Power to Certify.
  - (9) Procedure for Certifying.
  - (10) Severability.
  - (11) Construction.
  - (12) Withdrawal of order.
  - (13) Short Title.

**Rule 21 -- Frivolous Appeals.**

39

**Rule 21.1. -- Signing of Pleadings, Motions, Briefs and Other Papers; Representations to Court; Sanctions.**

40

- (a) Signature.
- (b) Representations to Court.
- (c) Sanctions.
  - (1) How Initiated.
    - (A) By Motion.
    - (B) On Court's Initiative.
  - (2) Nature of Sanction; Limitations.
  - (3) Order.

**Rule 22 -- Costs.**

41

- (a) Against whom Assessed.
- (b) Costs for and against the Government of Guam.
- (c) Costs of Reproduction.
- (d) Bill of Costs; Objections; Insertion in Mandate.
- (e) Costs on Appeal Taxable in the Superior Court.

**Rule 23 -- Substitution of Parties.**

42

- (a) Death of a Party.

(1) After Notice of Appeal is Filed.	
(2) Before Notice of Appeal is Filed -- Potential Appellant.	
(3) Before Notice of Appeal is Filed -- Potential Appellee.	
(b) Substitution for a Reason other than Death.	
(c) Public Officer: Identification, Substitution.	
(1) Identification of a Party.	
(2) Automatic Substitution of Officeholder.	
<b>Rule 24 -- Writs of Mandamus and Prohibition and Other Extraordinary Writs.</b>	<b>43</b>
(a) Mandamus or Prohibition to a Court; Petition, Filing, Service and Docketing.	
(b) Denial; Order Directing Answer; Briefs; Precedence.	
(c) Other Extraordinary Writs.	
(d) Form of Papers; Number of Copies.	
(e) Captions.	
(f) Certificate of Interested Parties.	
(g) Effective Date.	
<b>Rule 25 -- Writs of Habeas Corpus.</b>	<b>44</b>
<b>Rule 26 -- Pleadings and Proceedings in Original Action Filed in the Supreme Court.</b>	<b>45</b>
(a) Pleadings.	
(b) Proceedings	
<b>Rule 27 -- Reserved.</b>	<b>45</b>
<b>Rule 28 -- Determination of Cause; Dismissal; Opinions; Mandate.</b>	<b>45</b>
(a) Determination.	
(b) Opinions and Entry of Judgment.	
(1) Opinions.	
(2) Entry of Judgment; Notice.	
(A) Entry.	
(B) Notice.	
(c) Mandate: Contents; Issuance and Effective Date; Stay.	
(1) Contents.	
(2) When Issued.	
(3) Effective Date.	
(4) Staying the Mandate.	
(A) On Petition for Rehearing or Motion.	
(B) Pending Petition for Certiorari.	
(5) Remand.	
(d) Petitions to the Supreme Court of the United States.	
<b>Rule 29 -- Interest on Judgment.</b>	<b>46</b>
(a) When the Court Affirms.	
(b) When the Court Reverses.	
<b>Rule 30 -- Determination of Causes by the Court En Banc.</b>	<b>47</b>
(a) When Hearing or Rehearing En Banc may be ordered.	
(b) Petition for Hearing or Rehearing En Banc.	

- (c) Time for Petition for Hearing or Rehearing En Banc.
- (d) Number of Copies.
- (e) Response.
- (f) Call for a Vote.
- (g) Suggestion of a Party for Hearing or Rehearing En Banc.

**Rule 31 -- Petition for Rehearing. 48**

- (a) Time for Filing; Contents; Answer; Action by Court if granted.
  - (1) Time.
  - (2) Contents.
  - (3) Answer.
  - (4) Action by the Court.
- (b) Form of Petition; Length.

**Rule 32 -- Clerk's Duties. 48**

- (a) General Provisions.
  - (1) Qualifications.
  - (2) When Court is open.
- (b) Records.
  - (1) The Docket.
  - (2) Calendar.
  - (3) Other Records.
- (c) Notice of an Order or Judgment.
- (d) Custody of Records and Papers.
- (e) Costs and Fees to be collected by the Clerk.

**Rule 33 -- Rules by the Supreme Court of Guam. 49**

**Rule 34 -- Reserved. 49**

**Rule 35 -- Devolution of Chief Justice's Duties and System for Appointment of Designated or Pro Tempore Justices to matters before the Court. 49**

- (a) Performance of Chief Justice's duties when unavailable.
- (b) Assignments.

**Rule 36 -- Participation by the Attorney General. 50**

- (a) Generally.
- (b) Acts of Government Questioned.
- (c) Child Support.
- (d) Notification.

**Rule 37 -- Anders Briefs. 51**

**Rule 38 -- Rules Governing Electronic Filing. 52**

- (a) General Provisions.
  - (1) Short Title.
  - (2) Definitions.
  - (3) Scope of Rules.
  - (4) Authorized Users.
  - (5) Effective Date.

- (6) Electronic Case File.
- (b) Filing and Service Procedures.
  - (1) Registration Requirements.
  - (2) Time and Effect of E-Filing.
  - (3) Format of Documents.
  - (4) Payment of Filing Fees.
  - (5) Signatures.
  - (6) Electronic Service.
  - (7) System or User Filing or Service Errors.

**APPENDIX OF FORMS**

Form 1	Notice of Appeal – Civil	58
Form 1	Notice of Appeal – Criminal	59
Form 2	Application to Proceed In Forma Pauperis, Supporting Documentation and Order	60
Form 3	Certificate of Compliance with Rule 16(a)(7)(B)	63

## GUAM RULES OF APPELLATE PROCEDURES

### SUPREME COURT OF GUAM RULES OF APPELLATE PROCEDURE

#### APPLICABILITY OF RULES

##### **Rule 1 -- Effective Date of Rules, Scope and Practice.**

These rules govern procedure in appeals to the Supreme Court of Guam from the Superior Court of Guam and in other proceedings before the Supreme Court.

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

These appellate rules are promulgated pursuant to the *Frank G. Lujan Memorial Court Act of 1992*, as amended, Title 7 of the Guam Code Annotated. Nothing in these rules shall be construed to extend or limit the appellate jurisdiction of the Supreme Court of Guam as established by law.

The Guam Rules of Civil Procedure and the Rules of Court for the Superior Court, whenever applicable and not in conflict with the Rules of Appellate Procedure, are adopted as part of the rules of this court. Interpretations of these Rules as promulgated shall be supplied by the Supreme Court of Guam, whose authority is controlling in all courts. Interpretations of similar provisions from other jurisdictions are not binding upon the Supreme Court.

##### **Rule 2 -- Suspension of Rules.**

In the interest of justice or of expediting a decision or for other good cause shown, the Supreme Court may, except as otherwise provided in Rule 11(b) of these Rules, suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its decision.

#### APPEALS FROM JUDGMENTS AND ORDERS OF THE SUPERIOR COURT

##### **Rule 3 -- Appeals, Notice.**

(a) Filing the Notice of Appeal. An appeal permitted by law as of right from the Superior Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk of the Superior Court within the time allowed by Rule 4 of these Rules or as otherwise provided under Guam law. At the time of filing, the Appellant must furnish the Clerk of the Superior Court with sufficient copies of the notice of appeal to enable the Clerk to comply promptly with the requirements of subsection (e) of Rule 3. Additionally, the Appellant must submit to the Supreme Court a copy of the Notice of Appeal, stamp "filed" by the Superior Court. Failure of an Appellant to take any step other than the timely filing of the notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.

(b) Joint or Consolidated Appeals. If two (2) or more persons are entitled to appeal from a judgment or order of the Superior Court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or they may join in appeal after filing separate

## GUAM RULES OF APPELLATE PROCEDURES

timely notices of appeal; and they may thereafter proceed on appeal as a single Appellant. Appeals may be consolidated by order of the Supreme Court or upon motion of a party or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal.

(1) The notice of appeal shall:

(A) specify the party or parties taking the appeal; and

(B) shall designate the judgment, order, or part thereof appealed from.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is the suggested form of notice of appeal for civil appeals.

(d) Denomination of Parties.

(1) Appeals. The party who first appeals from the judgment or order of the Superior Court shall be denominated the Appellant; the Appellant's denomination in the proceeding in which the appeal is taken shall also be included so that the appellant will be denominated Plaintiff-Appellant or Petitioner-Appellant or Defendant-Appellant or Respondent-Appellant. All other parties shall be denominated Appellees and each Appellee's denomination in the proceeding in which the appeal is taken shall also be included so that each Appellee shall be denominated Plaintiff-Appellee or Petitioner-Appellee or Defendant-Appellee or Respondent-Appellee. Any Appellee who supports the position of an Appellant shall meet the time schedule for filing papers which is provided for that Appellant.

(2) Cross Appeals. The party appealing from the judgment or order of the Superior Court, where an appeal has already been taken by another party, shall be denominated the Cross-Appellant; the Cross-Appellant's denomination in the proceeding in which the appeal is taken shall also be included so that the Cross-Appellant will be denominated Plaintiff-Cross-Appellant or Petitioner-Cross-Appellant or Defendant-Cross-Appellant or Respondent-Cross-Appellant. All other parties shall be denominated Cross-Appellees and each Cross-Appellee's denomination in the proceeding in which the appeal is taken shall also be included so that each Cross-Appellee shall be denominated Plaintiff-Cross-Appellee or Petitioner-Cross-Appellee or Defendant-Cross-Appellee or Respondent-Cross-Appellee. Any Cross-Appellee who supports the position of the Cross-Appellant shall meet the time schedule for filing papers which is provided for that Cross-Appellant.

## GUAM RULES OF APPELLATE PROCEDURES

(3) Confidentiality. To avoid unnecessary trauma and unwarranted stigma from publicity inherent in an appellate proceeding and to maintain statutory requirements of confidentiality:

(A) In any case involving a child in need of protection, juvenile offenders, or the adoption of a child, the caption of the case shall refer to the child by initials only;

(B) All motions, briefs, opinions, and orders of the court shall refer to a child, a juvenile offender, a victim of a sex crime, or a party to an adoption proceeding, by initials only. To the extent that the identity of a party subject to the protection of this rule could be revealed by reference to another party, e.g. the mother or father of a child, that party should also be identified by initials or by familial relationship, if possible.

(C) All motions, briefs, opinions, and orders of the appellate court shall refer to a juror or member of the venire by initials only, by juror number, or by given name and last initial.

(e) Service of the Notice of Appeal. The Clerk of the Superior Court shall serve notice of the filing of the notice of appeal by mailing a copy thereof to counsel of record of each party other than the Appellant (or if a party is not represented by counsel, to the party at his last known address). Upon the filing of the notice of appeal, the Clerk of the Superior Court shall immediately transmit a copy of the notice of appeal and docket entries to the Supreme Court and all parties. When an appeal is taken by a defendant in a criminal case, the Clerk of the Superior Court shall also serve a copy of the notice of appeal upon him, either by personal service or by mail addressed to him. The Clerk shall also note on each copy served, the date on which the notice of appeal was filed. Failure of the Clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The Clerk shall note in the docket the names of the parties to whom the Clerk mails copies, with the date of mailing.

(f) Criminal Appeals. Form: The notice of appeal in criminal cases shall include the following:

(1) Description of the order or judgment being appealed and the date on which it was entered;

(2) A description of the offense for which the defendant was indicted and a description of the offense the defendant was convicted of and the date when the verdict was brought down.

(3) A description of the sentence imposed and whether the defendant is currently released on bail.

If the information provided herein is not included in the notice of appeal, the Clerk of the Superior Court shall give notice to counsel for both parties that the appeal will be subject to dismissal. If the information required is not supplied to the Supreme Court within ten (10) days,

## GUAM RULES OF APPELLATE PROCEDURES

unless good cause can be shown why there has been such an omission, then the appeal is subject to dismissal.<sup>2</sup>

### **Rule 4 -- Appeals, Timing.**

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal. In a civil case, except as provided in Rules 4(a)(4) and 4(c), the notice of appeal required by Rule 3 must be filed with the Superior Court within 30 days after the judgment or order appealed from is entered.

(2) Filing before Entry of Judgment. A notice of appeal filed after the court announces a decision or order -- but before the entry of the judgment or order -- is treated as filed on the date of and after the entry.

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party timely files in the Superior Court any of the following motions under the Guam Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

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

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54(d)(2) if the Superior Court extends the time to appeal under Rule 58(c);

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 10 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal--in compliance with Rule 3(c)--within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

---

<sup>2</sup> Form 1-Notice of Appeal

## GUAM RULES OF APPELLATE PROCEDURES

(iii) No additional fee is required to file an amended notice.

(5) Motion for Extension of Time.

(A) The Superior Court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 14 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

(6) Reopening the Time to File an Appeal. The Superior Court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) The motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier.

(B) The court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the Superior Court or any party within 21 days after entry; and

(C) The court finds that no party would be prejudiced.

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Guam Rule of Civil Procedure 58(a)(1) does not require a separate document, when the judgment or order is entered in the civil docket under Guam Rule of Civil Procedure 79(a); or

(ii) if Guam Rule of Civil Procedure 58(a)(1) requires a separate document, when the judgment or order is entered in the civil docket under Guam Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

(aa) The judgment or order is set forth on a separate document, or

(bb) 150 days have run from the entry of the judgment or order in the civil docket under Guam Rule of Civil Procedure 79(a).

(B) Reserved.

## GUAM RULES OF APPELLATE PROCEDURES

(b) Appeal in a Criminal Case.

(1) Time for Filing a Notice of Appeal.

(A) In a criminal case, a defendant's notice of appeal must be filed in the Superior Court within 10 days after the later of:

- (i) the entry of either the judgment or the order being appealed; or
- (ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the Superior Court within 30 days after the later of:

- (i) the entry of the judgment or order being appealed; or
- (ii) the filing of a notice of appeal by any defendant.

(2) Filing before Entry of Judgment. A notice of appeal filed after the court announces a decision, sentence, or order -- but before the entry of the judgment or order -- is treated as filed on the date of and after the entry.

(3) Effect of a Motion on a Notice of Appeal.

(A) If a defendant timely makes any of the following motions under the Guam Code of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 10 days after the entry of the order disposing of the last such remaining motion, or within 10 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

- (i) for judgment of acquittal under Title 8 GCA § 100.10 and 100.30;
- (ii) for a new trial under Title 8 GCA § 110.30, but if based on newly discovered evidence, only if the motion is made no later than 10 days after the entry of the judgment; or
- (iii) for arrest of judgment under Title 8 GCA § 115.10.

(B) A notice of appeal filed after the court announces a decision, sentence, or order -- but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) -- becomes effective upon the later of the following:

- (i) the entry of the order disposing of the last such remaining motion; or
- (ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective -- without amendment -- to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the Superior Court may -- before or after the time has expired, with or without motion and notice -- extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

## GUAM RULES OF APPELLATE PROCEDURES

(5) Jurisdiction. The filing of a notice of appeal under this Rule 4(b) does not divest the Superior Court of jurisdiction to consider, by motion or sua sponte, whether it has committed a clerical error in sentencing under Title 8 GCA § 120.50 or whether it has pronounced an illegal sentence under Title 8 GCA 120.46.

The trial court may deny such motions filed by a party pursuant 8 GCA §§ 120.50 and 120.46 without such party first requesting a remand by this court.

However, where the trial court, sua sponte or by motion, intends to grant a motion pursuant to 8 GCA §§ 120.50 or 120.46, the trial court shall certify its intention in writing, and the moving party shall within 10 days, file a motion to remand with this court.

The motion to remand shall be filed with a supporting declaration, delineating the trial court's certification that it intends to correct a clerical error in sentencing pursuant to 8 GCA § 120.50, or that it intends to correct an illegal sentence pursuant to 8 GCA § 120.46.

(6) Entry Defined. A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with Title 6 GCA § 4308 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the Superior Court docketes the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the Superior Court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the Supreme Court, the Clerk of the Supreme Court must note on the notice the date when it was received and send it to the clerk of the Superior Court. The notice is then considered filed in the Superior Court on the date so noted.

**SOURCE:** FRAP 4 as modified. Subsection (a)(4)(B)(i) through (iii) adopted pursuant to Prom Order No. 07-003-02 (June 22, 2007). Subsection (a)(7) amended by Prom. Order No. 07-003-03 (Nov. 7, 2007).

### **Rule 4.1 -- Statement of Jurisdiction.**

(a) Requirements. Within ten (10) days after filing the notice of appeal, the Appellant shall submit a statement of jurisdiction to the court. Such statement shall contain the following:

(1) the basis for claiming that the judgment or order appealed from is final or otherwise appealable;

## GUAM RULES OF APPELLATE PROCEDURES

(2) the statutory basis of the court's jurisdiction;

(3) the date of entry into the docket of the Superior Court of the judgment or order appealed from;

(4) an attached copy of the judgment or order indicating the document's date of entry into the docket of the Superior Court of Guam; and

(5) an attached copy of the judgment or order appealed from. The attached copy shall be legible to the degree that the court may verify the judgment's date of entry into the docket.

(b) Reserved.

(c) Effect of Failure to File. If the Appellant fails to file a statement of jurisdiction within the ten (10) day period after the filing of the Notice of Appeal, the case shall be dismissed for lack of jurisdiction. If a statement of jurisdiction, filed within the ten (10) day period after the filing of the Notice of Appeal, indicates that no final appealable judgment has been entered on the Superior Court docket, the case shall also be dismissed for lack of jurisdiction.

**NOTE:** GRAP 4.1 provides a window within which a final judgment may be entered so as to comply with GRAP 4. Cases not yet ripe for appeal, which are dismissed pursuant to GRAP 4.1, may be re-filed pursuant to GRAP 4.

### **Rule 4.2 -- Interlocutory Appeal by Permission.**

(a) Petition for Permission to Appeal.

(1) To request permission to appeal an interlocutory order, decree, or judgment, when an interlocutory appeal is within the Supreme Court's discretion under Title 7 GCA § 3108(b), a party must file a verified petition for permission to appeal. The petition must be filed with the Supreme Court clerk with proof of service on all other parties to the Superior Court action and the Superior Court clerk.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal, or if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(b) Contents of the Petition; Answer or Cross-Petition; Supporting Memorandum of Points and Authorities; Oral Arguments.

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) a statement that the interlocutory appeal is authorized under Title 7 GCA § 3108(b)(1), (2), or (3) or under other statute or rule and the reasons why such appeal should be allowed under the circumstances; and

(E) an attached copy of the order, decree, or judgment complained of and any related opinion or memorandum.

## GUAM RULES OF APPELLATE PROCEDURES

(2) The petitioner must also file a supporting memorandum of points and authorities.

(3) A party may file an answer in opposition or cross-petition with supporting points and authorities within 7 days after the petition is served.

(4) The petition and answer will be submitted without oral arguments unless the Supreme Court orders otherwise.

(c) **Form of Papers; Number of Copies.** All papers must conform to Rule 16. Except by the Court's permission, the papers must not exceed 15 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 4.2(b)(1)(E). An original and 5 copies must be filed.

(d) **Grant of Permission; Fees; Cost Bond; Filing the Record; Jurisdiction.**

(1) Within 10 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the Superior Court clerk any required fees for appeals to this Court, and pay the Supreme Court clerk the required docket fees; and

(B) file a cost bond if required under Rule 12.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) Upon the filing of the docket fee, the Supreme Court clerk shall enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 7, 7.1, and 8.

(4) The initial grant of a petition for permission to appeal does not foreclose the Supreme Court from revisiting any jurisdictional issues related to the interlocutory appeal.

### **Rule 5 -- Release in Criminal Cases.**

(a) **Release Entered Prior to a Judgment of Conviction.** An appeal from an order by the Superior Court refusing or imposing conditions of release shall be determined promptly, and the Superior Court shall state in writing the reasons for the action taken. The question of defendant's release on bail shall be heard after reasonable notice to the Appellee, upon such papers, affidavits and portions of the record as the parties may present. Normally, a motion for reconsideration of bail should be first made in the Superior Court. The Supreme Court may order the release of the defendant if it appears that the provisions and criteria of the Guam Criminal Procedure Code (Title 8, Guam Code Annotated § 40.85) relating to release on bail have not been satisfied. Decisions by the Supreme Court pursuant to this rule are effective immediately upon issuance.

(b) **Release Pending Appeal from Judgment of Conviction.** Application for release after a judgment of conviction shall be made in the first instance in the Superior Court. If the Superior Court refuses release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for the actions taken. Thereafter, if an appeal is pending in the Supreme Court, a motion for release or for modifications of the conditions of release, pending review may

## GUAM RULES OF APPELLATE PROCEDURES

be made to the Supreme Court. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the Appellee. The Supreme Court may order the release of the defendant, pending appeal, if it appears that the provisions and criteria of the Guam Criminal Procedure Code (Title 8, Guam Code Annotated § 40.85) relating to release on bail have not been satisfied. Decisions by the Supreme Court pursuant to this rule are effective immediately upon issuance.

### **Rule 6 -- Motions.**

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion with proof of service on all other parties unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) Contents of a Motion.

(A) Grounds and relief sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying documents.

(i) Any brief, affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(3) Response.

(A) Time to file. Any party may file a response to a motion. Rule 6(a)(2) governs its contents. The response must be filed within 7 days after service of the motion unless the court shortens or extends the time. Motions authorized by Rules 5, 12, and 23(b) of these Rules may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion. A party choosing not to respond to a motion shall file a statement of non-opposition within 7 days after service of the motion unless the parties stipulate to or the moving papers otherwise indicate non-opposition by the non-moving party.

(B) Request for affirmative relief. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 6 (a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed within 5 days after service of the response. A reply must not present matters that do not relate to the response.

(b) Determination of Motions for Procedural Orders. Notwithstanding the provisions of subsection (a) of this Rule as to motions generally, motions for procedural orders including any motion under Rule 11(b) of these Rules, may be acted upon at any time, without awaiting a

## GUAM RULES OF APPELLATE PROCEDURES

response thereto. Any party adversely affected by such action may by application to the court request reconsideration, vacation or modification of such action. Procedural matters incident to an appeal and other matters requiring determination pending decision on the merits may be acted upon by the Chief Justice or delegated by the Chief Justice to a Justice or to a panel of the Supreme Court of Guam for resolution. Procedural motions, including requests for extensions of time or other scheduling matters, may be delegated by the Chief Justice to the Clerk of the Supreme Court.

(c) Voluntary Dismissal.

(1) Voluntary Dismissal in the Superior Court. If an appeal has not been docketed, the appeal may be dismissed by the Superior Court upon the filing in that court of a stipulation for dismissal signed by all the parties or upon motion and notice by the Appellant.

(2) Voluntary Dismissal in the Supreme Court. If the parties to an appeal or other proceeding shall sign and file with the Clerk of the Supreme Court an agreement that the proceedings be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the Appellant on such terms as may be agreed upon by the parties or fixed by the court.

(3) Motions or Stipulations for Voluntary Dismissal of Criminal Appeal. Motions or stipulations for the voluntary dismissal of a criminal appeal shall, if made or joined in by counsel for Defendant-Appellant, be accompanied by Defendant-Appellant's personal written consent thereto.

(4) Effective Date of Voluntary Dismissal. Dismissals shall be effective upon order of the court.

(d) Motions by Appellee for Dismissal of Criminal Appeal. Where a motion is made by an Appellee to dismiss a criminal appeal, copies of the motion and supporting papers shall be served upon both the Appellant and his counsel, if any. If the ground of such motion is failure to prosecute the appeal, Appellant's counsel, if any, shall respond thereto within seven (7) days, stating why the appeal has not been prosecuted and advising whether he is retained or court-appointed counsel.

(e) Required Recitals in Motions in Criminal Appeals. Any motion in an appeal in a criminal proceeding shall contain a recital as to any previous applications for the relief sought and as to the bail status of the defendant.

(f) Emergency Motions. Whenever a movant requests expedited action upon a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the Court to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall include the telephone numbers and office addresses of moving and opposing counsel, and it shall be accompanied by an affidavit, served upon opposing counsel, containing factual recitals showing the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the Superior Court, and, if

## GUAM RULES OF APPELLATE PROCEDURES

any grounds relied upon have not been submitted to the Superior Court, why the motion should not be remanded to the Superior Court for consideration.

Prior to filing an emergency motion, the movant shall make every practicable effort to notify the Clerk at the earliest time there is an indication that urgent relief from this Court will be sought. The movant shall also make every practicable effort to notify opposing counsel in such a manner and at such time that counsel can respond to the motion. An affidavit shall be attached to the motion stating when and how opposing counsel was notified; or, if opposing counsel was not notified, stating why it was not practicable to notify counsel in such a manner and at such time that counsel could respond to the motion.

(g) Form of Papers; Page Limits; and Number of Copies.

(1) Format.

(A) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Cover. A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) Binding. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) Paper size, line spacing, and margins. The document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) Typeface and type styles. The document must comply with the typeface requirements of Rule 16(a)(5) and the type-style requirements of Rule 16(a)(6).

(2) Page Limits. A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 6(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

(3) Number of Copies. An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

### **Rule 7 -- The Record on Appeal.**

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

- (1) the original papers and exhibits filed in the Superior Court;
- (2) the transcript of proceedings, if any;

## GUAM RULES OF APPELLATE PROCEDURES

(3) a certified copy of the docket entries prepared by the Superior Court.

(b) The Transcript of Proceedings.

(1) Appellant's Duty to Order. Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary with the following requirements:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the Government of Guam, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the Superior Court clerk; or

(B) file a certificate stating that no transcript will be ordered

(2) Unsupported Finding or Conclusion. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) Partial Transcript. Unless the entire transcript is ordered:

(A) the appellant must within the 10 days provided in Rule 7(b)(1) file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript or other parts of the proceedings, the appellee must, within 10 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 10 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the Superior Court for an order requiring the appellant to do so.

(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript is Unavailable. If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 10 days after being served. The statement and any objection or proposed amendments must then be submitted to the Superior Court clerk for

## GUAM RULES OF APPELLATE PROCEDURES

settlement and approval. As settled and approved, the statement must be included by the Superior Court clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 7(a), the parties may prepare, sign, and submit to the Superior Court a statement of the case showing how the issues presented by the appeal arose and were decided in the Superior Court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it -- together with any additions that the Superior Court may consider necessary to a full presentation of the issues on appeal -- must be approved by the Superior Court and must then be certified to the Supreme Court as the record on appeal. The Superior Court clerk must then send it to the Supreme Court Clerk within the time provided by Rule 7.1. A copy of the agreed statement may be filed in place of the Excerpts required by Rule 15.

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the Superior Court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the Superior Court before or after the record has been forwarded; or

(C) by the Supreme Court.

(3) All other questions as to the form and content of the record must be presented to the Supreme Court.

### **Rule 7.1. -- Forwarding the Record.**

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 7(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) Duties of Reporter and Superior Court Clerk.

(1) Reporter's Duty to Prepare and File a Transcript. The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the Supreme Court Clerk.

(B) If the transcript cannot be completed within 45 days of the reporter's receipt of the order, the reporter may request the Supreme Court Clerk to grant additional time to complete it. The Clerk must note on the docket the action taken and notify the parties.

## GUAM RULES OF APPELLATE PROCEDURES

(C) When a transcript is complete, the reporter must file it with the clerk of Superior Court and notify the Clerk of Supreme Court of the filing.

(2) Superior Court Clerk's Duty to Forward. When the record is complete, the Superior Court clerk must number the documents constituting the record and send them promptly to the Clerk of the Supreme Court together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so, the clerk of the Superior Court will not send to the Supreme Court any documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by these rules.

(c) The Certificate of Record. Upon the filing of the transcript in the Superior Court, or alternatively, when the Superior Court clerk receives notice that no transcript will be ordered, the clerk of the Superior Court shall file a certificate of record with the clerk of the Supreme Court. The certificate shall attest that all documents which comprise the clerk's record on appeal (pleadings, exhibits and other papers filed) and the reporters' transcript (if any) are available to the parties in the Superior Court clerk's office. The filing of the certificate of record with the Supreme Court shall indicate that the Supreme Court considers the record filed. The Clerk shall immediately give notice to all parties of the date on which the certificate of record (i.e. transcript or certificate that no transcript was ordered) was filed and of the briefing schedule for the filing and serving of briefs.

(d) Retaining the Records by Court Order. The Supreme Court may by order provide that a certified copy of the docket entries be forwarded instead of the designated record.

(e) Record for a Preliminary Motion in the Supreme Court. If, before the record is forwarded, a party makes any of the following motions in the Supreme Court:

- (1) for dismissal;
- (2) for release;
- (3) for a stay pending appeal;
- (4) for additional security on the bond on appeal or on a supersedeas bond; or
- (5) for any other intermediate order

the Clerk of the Superior Court must send the Supreme Court any parts of the record designated by any party.

**SOURCE:** FRAP 10 and 11.

### **Rule 8 -- Docketing the Appeal and Filing a Representation Statement.**

(a) Docketing the Appeal. Upon receiving the copy of the notice of appeal and the docket entries from the Superior Court under Rule 3(e), the Clerk of the Supreme Court must docket the appeal under the title of the Superior Court action and must identify the appellant, adding the appellant's name if necessary. At the time of filing the notice of appeal in the Superior Court, the appellant shall pay to the Clerk of the Supreme Court a docket fee of Two Hundred Fifty Dollars (\$250.00). If the appellee chooses to file a cross-appeal, at the time of filing the notice

## GUAM RULES OF APPELLATE PROCEDURES

of cross appeal in the Superior Court, the appellee/cross-appellant shall pay to the Clerk of the Supreme Court a docket fee of Two Hundred Fifty Dollars (\$250.00).

(b) Filing a Representation Statement. Unless the Supreme Court designates another time, the attorney who filed the notice of appeal must, within 10 days after filing the notice, file a statement with the Clerk of the Supreme Court naming the parties that the attorney represents on appeal.

### **Rule 9 -- Proceedings In Forma Pauperis; Appointment of Counsel; Withdrawal as Retained or Appointed Counsel; Compensation.**

(a) Leave to Proceed In forma Pauperis.

(1) Motion in the Superior Court. Except as stated in Rule 9(a)(3), a party to a Superior Court action who desires to appeal in forma pauperis must file a motion in the Superior Court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 2 of the Appendix of forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the Superior Court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the Superior Court denies the motion, it must state its reasons in writing.

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the Superior Court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the Superior Court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) Notice of Superior Court's Denial. The Superior Court clerk must immediately notify the parties and the Supreme Court when the Superior Court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in form pauperis.

(5) Motion in the Supreme Court. A party may file a motion to proceed on appeal in forma pauperis in the Supreme Court within thirty (30) days after service of the notice prescribed in Rule 9(a)(4). The motion must include a copy of the affidavit filed in the

## GUAM RULES OF APPELLATE PROCEDURES

Superior Court and the Superior Court's statement of reasons for its action. If no affidavit was filed in the Superior Court, the party must include the affidavit prescribed by Rule 9(a)(1).

**SOURCE:** FRAP 24 (a).

(b) Leave to Proceed In forma Pauperis on Appeal or Review of an Administrative Agency Proceeding. When an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the Supreme Court, a party may file in the Supreme Court a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 9(a)(1).

**SOURCE:** FRAP 24 (b).

(c) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

**SOURCE:** FRAP 24(c).

(d) Counsel on Appeal.

(1) Continuity of Representation on Appeal. Counsel in criminal cases, whether retained or appointed by the Superior Court, shall ascertain whether his client wishes to appeal and file a notice of appeal upon his or her client's request. Counsel shall take all steps required by these Rules to perfect and prosecute the appeal. Counsel shall continue to represent his client on appeal until counsel is relieved and replaced by substitute counsel or by his client *pro se* in accordance with this Rule. If counsel was appointed by the Superior Court pursuant to Rule 13 of the Rules of the Superior Court and a notice of appeal has been filed, counsel's appointment automatically shall continue on appeal.

**SOURCE:** Ninth Circuit Rules of Appellate Procedure, Circuit Rule 4-1; GRAP 9(b)(2)(A), GRAP 9(b)(2)(B).

(2) Application for Indigent Status and Appointment of Counsel when Counsel was not appointed in the Superior Court.

(A) Applicability. This subsection applies to all appeals in which counsel was not appointed in the Superior Court and in which a party is:

- (i) charged with
  - (aa) a felony;
  - (bb) a misdemeanor;
  - (cc) a petty misdemeanor except those filed in Traffic Court;
  - (dd) juvenile delinquency for the commission of an act which, if committed by an adult, would be considered a felony or misdemeanor; or
  - (ee) a violation of probation or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of probation;
- (ii) in custody as a material witness;

## GUAM RULES OF APPELLATE PROCEDURES

(iii) under arrest, when representation is required by law;

(iv) 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;

(v) charged with civil or criminal contempt and facing loss of liberty;

(vi) seeking collateral relief from a judgment in a criminal matter; or

(vii) a person whose rights under the United States Constitution (or the Organic Act) may be substantially infringed without the appointment of counsel.

In every such case, the Clerk of the Supreme Court, when he receives a copy of the notice of appeal, shall notify the Appellant in instances where the Appellant is entitled to be represented by counsel on appeal and that, if he is financially unable to obtain counsel, the Supreme Court will appoint counsel. Such notice shall be accompanied by a copy of Form 2 attached hereto and entitled Application to Proceed in forma Pauperis, Supporting Documentation and Order and the Clerk shall advise the Appellant that, if he desires to appeal in forma pauperis he shall complete the form, swear to it before an officer authorized to administer oaths, and return it to the Clerk. Upon receipt of the completed Form 2 from the Appellant, the Clerk shall submit the form to the Chief Justice for his approval. Immediately after the Chief Justice has approved Appellant's application to proceed in forma pauperis, the Chief Justice shall appoint counsel to represent the Appellant unless the Appellant executes a waiver of appointment of counsel as set forth in Section (d)(2)(B) of this Rule.

**SOURCE:** GRAP 9(B)(A); Ninth Circuit Rules of Appellate Procedure, Circuit Rule 4-1(b).

(B) Waiver. The Clerk shall also notify the appellant that if the appellant does not desire the appointment of counsel, he or she shall so advise the Supreme Court, by filing with the Clerk a written statement to that effect, signed by the appellant.

**SOURCE:** GRAP 9(b)(1)(B).

(C) Other Appeal. In any other case in which the appellant desires the appointment of counsel under federal or local law, he or she shall so advise the Clerk of the Supreme Court, complete attached Form 2 entitled Application to Proceed In Forma Pauperis, Supporting Documentation and Order as above provided, and forward it to the Clerk. The Clerk shall send the form to any appellant who seeks appointment of counsel and does not, at the same time, file the form.

(3) Withdrawal of Counsel after Filing Notice of Appeal. A motion to withdraw as counsel on appeal after the filing of the notice of appeal, where counsel is retained in a criminal case or appointed by the Superior Court shall be filed with the Clerk of the Supreme Court within twenty-one (21) days after the filing of the notice of appeal and shall be accompanied by a statement of reasons including:

## GUAM RULES OF APPELLATE PROCEDURES

(A) A substitution of counsel which indicates that new counsel has been retained to represent defendant; or

(B) the defendant's completed motion to proceed *in forma pauperis* and motion and order for appointment of counsel; or

(C) an affidavit or signed statement from the defendant stating that the defendant consents to appointed counsel being relieved and requesting appointment of substitute counsel; or

(D) a motion by defendant to proceed *pro se*; or

(E) an affidavit or signed statement from the defendant showing that the defendant has been advised of his or her rights with regard to the appeal and expressly stating that the defendant wishes to dismiss the appeal voluntarily.

Any motion filed pursuant to this section not accompanied by defendant's affidavit or signed statement shall set forth the reasons for such omission.

**SOURCE:** Ninth Circuit Rules of Appellate Procedure, Circuit Rule 4-1(c); GRAP 9(b)(2)(C).

(F) Alternatively, if after conscientious examination of the record, should counsel for the defendant-appellant determine that the case is wholly frivolous, counsel shall advise the Supreme Court and request permission to withdraw from the case. Counsel shall file, in conjunction with a motion to withdraw as counsel, a brief, pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, *reh'g denied*, 388 U.S. 924, 87 S. Ct. 2094 (1967) which refers to anything in the record which might arguably support an appeal. Such brief and motion to withdraw shall be provided to the defendant-appellant. Additionally, counsel shall file a motion for leave for the defendant-appellant to file a *pro se* supplemental opening brief, should the defendant-appellant believe there are appealable issues in the case.

Subsequent to the Supreme Court's grant of leave for the defendant-appellant to file a brief, *pro se* supplemental opening brief, and the defendant-appellant's filing of a *pro se* supplemental opening brief, wherein the defendant-appellant may raise any issues he or she so chooses, the appellee People of Guam shall file an answer in response. The Supreme Court shall then consider the *Anders* brief, the brief filed *in pro per*, and the appellee's response and fully examine the record before making a determination as to whether the appeal shall proceed or be dismissed.

Should the Supreme Court determine that the case should proceed, it shall either grant counsel's motion to withdraw and appoint new counsel or require counsel to remain on the case and represent and assist the defendant-appellant in his or her appeal.

*Anders* briefs shall conform to the form requirements of Rule 16 and shall be served and filed as prescribed by Rule 17.

**SOURCE:** Ninth Circuit Rules of Appellate Procedure, Circuit Rule 4-1(c)(6); GRAP 37.

(4) Compensation and Reimbursement for Court-Appointed Counsel. Any case in which counsel was appointed in the Superior Court shall be treated as a new appointment on

## GUAM RULES OF APPELLATE PROCEDURES

appeal for compensation purposes. Compensation, reimbursement and filing of claims for court-appointed counsel shall be made as follows: court-appointed counsel shall receive ninety dollars (\$90.00) for in-court or preparation time. Such counsel may only claim up to two-thousand five hundred dollars (\$2,500.00) for the appeal, unless good cause is shown to the Chief Justice. Good cause may be established through submission of a written request to the Clerk outlining the circumstances surrounding counsel's request to be compensated over the two-thousand five hundred dollar (\$2,500.00) cap. Written authorization or denial will be provided to counsel.

**SOURCE:** GRAP 9(b)(3); Rule 13.5(A)(4) of the Rules for the Superior Court of Guam.

### **Rule 10 -- Filing and Service.**

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in the Supreme Court must be filed with the Clerk.

(2) Filing: Method and Timeliness.

(A) In General. Filing may be accomplished by mail addressed to the Clerk, but filing is not timely unless the Clerk receives the papers within the time fixed for filing.

(B) A Brief or Excerpt. A brief or excerpt is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the Clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the Clerk within 3 calendar days.

(C) Inmate Filing. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 6 GCA § 4308 or by a notarized statement either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) Electronic Filing. Filing may be accomplished by electronic means as set forth in Rule 38. A paper filed by electronic means in compliance with Rule 38 constitutes a written paper for the purpose of applying these rules.

(3) Clerk's Refusal of Documents. The Clerk must 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.

(A) The Clerk shall inform a party of any non-compliance with the rules and a date by which the corrected document must be submitted. If a party refuses to take steps directed by the Clerk or if in the Clerk's judgment the party fails to correct the non-compliance, the Clerk must refer the matter to the Court for ruling.

## GUAM RULES OF APPELLATE PROCEDURES

(b) **Service of All Papers Required.** Unless a rule requires service by the Clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) **Manner of Service.** Service may be personal, by mail, or by third-party commercial carrier for delivery within 3 calendar days or by facsimile machine process. However, briefs and excerpts of record may not be served by facsimile machine process. When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the Court. Personal service includes delivery of the copy to a responsible person at the office of counsel. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

In serving counsel with orders, judgments, notices or any other document by the Court or Clerk, and if a box is maintained in the Clerk's office for counsel, service is considered complete upon depositing the document in the respective counsel's box. Service by depositing a document in counsel's box is available only to the Court.

(d) **Proof of Service.**

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served;

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or excerpt is filed by mailing or dispatch in accordance with Rule 10(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the Clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) **Number of Copies.** When these rules require the filing or furnishing of a number of copies, the Court may require a different number by order in a particular case.

### **Rule 11 -- Computing and Extending Time.**

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any court order or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

(2) Exclude intermediate Saturdays, Sundays and legal holidays when the period is less than 11 days, unless stated in calendar days.

## GUAM RULES OF APPELLATE PROCEDURES

(3) Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or, if the act to be done is filing a paper in court, a day on which the weather or other conditions make the Clerk's office inaccessible.

(4) As used in this rule, "legal holiday" is defined as set forth in Title 1 GCA § 1000.

(b) Extending Time. For good cause, the Court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the Court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the Government of Guam, unless specifically authorized by law.

(c) Additional Time after Service. When a party is required or permitted to act within a prescribed period after a paper is served on that party, three(3) calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.

### **Rule 12 -- Stay or Injunction Pending Appeal.**

(a) Motion for Stay.

(1) Initial Motion in the Superior Court. A party must ordinarily move first in the Superior Court for the following relief:

(A) a stay of the judgment or order of a Superior Court pending appeal;

(B) approval of a supersedeas bond; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in the Supreme Court; Conditions on Relief. A motion for the relief mentioned in Rule 12(a)(1) may be made to the Chief Justice of the Supreme Court.

(A) The motion must:

(i) show that moving first in the Superior Court would be impracticable; or

(ii) state that, a motion having been made, the Superior Court denied the motion or failed to afford the relief requested and state any reasons given by the Superior Court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

## GUAM RULES OF APPELLATE PROCEDURES

(C) The moving party must give reasonable notice of the motion to all parties.

(3) Determination of Motion. A motion under this Rule 12(a)(2) will normally be considered by a panel of the Court but, in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by the Chief Justice.

(b) Proceeding Against Surety. The Court may condition relief on a party's filing a bond or other appropriate security in the Superior Court. In a civil case, the Superior Court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Superior Court and irrevocably appoints the Superior Court Clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the Superior Court without the necessity of an independent action. The motion and any notice that the Superior Court prescribes may be served on the Supreme Court Clerk, who must promptly mail a copy to each surety whose address is known.

(c) Stay in Criminal Case. Title 8 GCA § 130.30 governs a stay in criminal case.

### **Rule 13 -- Briefs.**

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

- (1) a corporate disclosure statement, if required by Rule 13.1;
- (2) a table of contents, with page references;
- (3) a table of authorities -- cases (alphabetically arranged), statutes, and other authorities -- with references to the pages of the brief where they are cited;
- (4) a jurisdictional statement, including:
  - (A) the basis for the Superior Court's subject matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (B) the basis for the Supreme Court's jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (C) the filing dates establishing the timeliness of the appeal or petition of review; and
  - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the Supreme Court's jurisdiction on some other basis;
- (5) a statement of the issues presented for review;
- (6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;

## GUAM RULES OF APPELLATE PROCEDURES

(7) a statement of the facts relevant to the issues submitted for review with appropriate references to the record;

(8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(C) as to each issue, appellant shall state where in the record on appeal the issue was raised and ruled on. In addition, if a ruling complained of on appeal is one to which a party must have objected at trial, to preserve a right of review, e.g., a failure to admit or exclude evidence or the giving or refusal to give a jury instruction, the party shall state where in the record on appeal the objection and ruling are set forth.

(10) a short conclusion stating the precise relief sought; and

(11) the certificate of compliance, if required by Rule 16(a)(7)(D).

(b) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 13(a)(1)-(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the facts; and

(5) the statement or statements of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the appellee's brief. An appellee who has cross-appealed may file a brief in reply to the appellant's response to the issues presented by the cross-appeal. Unless the Supreme Court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities - cases (alphabetically arranged), statutes, and other authorities - with references to the pages of the reply brief where they are cited.

(d) Supplemental Brief. Where permitted by the Supreme Court, and unless otherwise ordered, supplemental briefs shall be no more than 20 pages in length, and shall otherwise comply with the form requirements in Rule 16 for opening briefs. Such briefs must contain a table of contents, with page references, and a table of authorities - cases (alphabetically

## GUAM RULES OF APPELLATE PROCEDURES

arranged), statutes, and other authorities - with references to the pages of the supplemental brief where they are cited. Supplemental briefs shall include:

(1) a statement of the supplemental issues presented for review;

(2) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below, if such supplemental facts were not included in previously filed briefs;

(3) a statement of the facts relevant to the issues submitted for review with appropriate references to the record;

(4) a summary of the supplemental arguments, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(5) the supplemental argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(C) as to each issue, appellant shall state where in the record on appeal the issue was raised and ruled on. In addition, if a ruling complained of on appeal is one to which a party must have objected at trial, to preserve a right of review, e.g., a failure to admit or exclude evidence or the giving or refusal to give a jury instruction, the party shall state where in the record on appeal the objection and ruling are set forth;

(6) a short conclusion stating the precise relief sought; and

(7) the certificate of compliance, if required by Rule 16(a)(7)(D).

(e) Reference to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant", and "appellee". To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(f) Reference to the Record. Every assertion in briefs regarding matters in the record shall be supported by a reference to the location, if any, in the excerpts of record where the matter is to be found. If the brief refers to an unreproduced part of the record, any references must be to the docket number, the description of the original document, and the page reference of the document. for example:

Record on Appeal ("RA"), tab x, (Compl., p. x)

*Later references:* RA, tab x, (Compl., p. x)

## GUAM RULES OF APPELLATE PROCEDURES

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(g) Reproduction of Statutes, Rules, Regulations, etc. If the Supreme Court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the Supreme Court in pamphlet form.

(h) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(i) Developments Affecting Appeals, Certified Questions, Motions and Writ Petitions. Counsel shall timely inform the Clerk and each other party by letter of all developments affecting appeals, certified questions, motions or writ petitions pending in this Court, including contemplated and actual settlements, circumstances or facts that could render the matter moot and pertinent developments in applicable case law, statutes and regulations. The writing shall contain proof of service on each other party. The letter must make reference either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

(j) Certificate as to Interested Parties.

(1) In all cases except criminal and habeas corpus cases, counsel for private (non-government) parties shall attach to the inside of the cover of the initial brief counsel's certificate listing all persons, associations of persons, firms, partnerships, or corporations known to have an interest in the outcome of the case, as follows:

### Number and Caption of Case Certificate Required by Rule 13(j)

The undersigned, counsel of record for \_\_\_\_\_ certifies that the following have an interest in the outcome of this case: (Here list the names of all such parties and identify their interests.) these representations are made to enable Justices of the court to evaluate possible recusal.

\_\_\_\_\_  
Attorney of Record for Appellant/Appellee

(2) In all cases, Counsel shall list all of the Justices who presided over any portion of the instant case or any related proceeding in the court below and all Justices who may have served as counsel of record, or who may have provided legal advice to any party to the proceeding and any interested parties listed in subsection (1) above.

If there are no known interested parties other than those participating in the case, a statement to that effect will constitute compliance with this rule.

## GUAM RULES OF APPELLATE PROCEDURES

(k) **Attorney's Fees.** Any party in a civil case who intends to seek attorney's fees for the appeal must include a short statement to that effect and must identify the authority under which the attorney's fees will be sought. Failure to comply with this provision may constitute a waiver of such fees, in whole or in part.

(l) **Statement of Related Cases.** Each party shall identify in a statement on the last page of its initial brief any known related case pending in this Court. As to each such case, the statement shall include the name and docket number of the related case and describe its relationship to the case being briefed. Cases are deemed related if they:

- (1) arise out of the same or consolidated cases in the Superior Court;
- (2) are cases previously heard in this court which concern the case being briefed;
- (3) raise the same or closely related issues; or
- (4) involve the same transaction or event;

If no other cases in this Court are deemed related, a statement shall be made to that effect. The Appellee need not include any case identified as related in the Appellant's brief.

(m) **Consequences of Filing a Non-Conforming Brief.** If an Appellant or Appellee files a brief which substantially fails to meet the requirements of this Rule or Rule 16, and does not file a conforming brief within the time permitted under Rule 17, the consequence shall be as provided in Rule 17(e).

### **Rule 13.1 -- Corporate Disclosure Statement.**

(a) **Who Must File.** Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) **Time for Filing; Supplemental Filing.** A party must file the Rule 13.1 statement with the principal brief or upon filing a motion, response, petition, or answer in the Supreme Court, whichever occurs first, unless the Court requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 13.1(a) changes.

(c) **Number of Copies.** If the Rule 13.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and three (3) copies unless the Court requires a different number by order in a particular case.

### **Rule 13.2 -- Cross-Appeals.**

(a) **Applicability.** This rule applies to a case in which a cross-appeal is filed. Rules 13(a)-(c), 16(a)(2), 16(a)(7)(A)-(B), and GRAP 17(a)] do not apply to such case, except as otherwise provided in this rule.

(b) **Designation of Appellant.** The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 15 and 19. If notices are filed on the same day, the

## GUAM RULES OF APPELLATE PROCEDURES

plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by Court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 13(a).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 13(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 13(a)(2)-(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

- (A) the jurisdictional statement;
- (B) the statement of the issues;
- (C) the statement of the case;
- (D) the statement of the facts; and
- (E) the statement of the standard of review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross appeal. That brief must comply with Rule 13(a)(2)-(3) and 11 and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; and intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 16(a)(2).

(e) Length.

(1) Page Limitation. Unless it complies with Rule 13.2(e)(2) and 3, the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) Type Volume Limitation.

## GUAM RULES OF APPELLATE PROCEDURES

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

- (i) it contains no more than 14,000 words; or
- (ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

- (i) it contains no more than 16,500 words; or
- (ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 13.2(e)(2)(a).

(3) A brief submitted under Rule 13.2(e)(2) must comply with Rule 16(a)(7)(D).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

- (1) the appellant's principal brief, within 40 days after the record is filed;
- (2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;
- (3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and
- (4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 3 days before argument unless the court, for good cause, allows a later filing.

### **Rule 14 -- Brief of Amicus Curiae.**

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion, or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Government of Guam or any of its branches, agencies and instrumentalities. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Except when all parties consent, any amicus curiae shall file its brief within the time allowed the party whose position it supports unless the Court, for cause shown, shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will not be granted except for extraordinary reasons.

No reply brief of an amicus curiae will be received.

### **Rule 15 -- The Excerpts of Record.**

(a) Purpose.

(1) GRAP 15 requires the parties to prepare excerpts of record. All members of the panel assigned to hear the appeal ordinarily will not have the entire record. The purpose of the excerpts of record is to provide each member of the panel with those portions of the

## GUAM RULES OF APPELLATE PROCEDURES

record necessary to reach a decision. The parties should ensure that in accordance with the limitations of Rule 15, those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts.

(2) Excerpts of Record must be filed in all cases.

(b) Appellant's Initial Excerpts of Record. At the time the appellant's opening brief is filed, the appellant shall file six (6) copies of excerpts of record bound separately from the briefs. The appellant shall serve one (1) copy of the excerpts on each of the other parties.

(c) Required Contents of the Excerpts of Record.

(1) In all appeals the excerpts of record shall include:

(A) the notice of appeal;

(B) the trial court docket sheet;

(C) the judgment or interlocutory order appealed from;

(D) any opinion, findings of fact or conclusions of law relating to the judgment or order appealed from;

(E) any other orders or rulings, including minute orders, sought to be reviewed;

(F) any jury instructions given or refused which presents an issue on appeal;

(G) where an issue on appeal is based upon a challenge to the admission or exclusion of evidence, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the evidence, offer of proof, ruling or order, and objections at issue;

(H) where an issue on appeal is based upon a challenge to any other ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel in which the assignment of error is alleged to rest;

(I) where an issue on appeal is based upon a challenge to the allowance or rejection of jury instructions, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the instructions at issue, including the ruling or order, and objections;

(J) where an issue on appeal is based on written exhibits (including affidavits), those specific portions of the exhibits necessary to resolve the issue; and

(K) any other specific portions of any documents in the record that are cited in appellant's briefs and necessary to the resolution of an issue on appeal.

(2) In addition to the items required by Rule 15(c)(1), in all criminal appeals, and other proceeding seeking relief in a judgment or order from a criminal case, the excerpts of record shall also include:

(A) the final indictment; and

## GUAM RULES OF APPELLATE PROCEDURES

(B) where an issue on appeal concerns matters raised at a suppression hearing, change of plea hearing or sentencing hearing, the relevant portions of reporter's transcript of that hearing.

(3) In addition to the items required by 15(c)(1), in all civil appeals the excerpts of record shall also include:

(A) the final pretrial order, or, if the final pretrial order does not set out the issues to be tried, the final complaint and answer, petition and response, or other pleadings setting out those issues, and;

(B) where the appeal is from the grant or denial of a motion, those specific portions of any affidavits, declarations, exhibits, or similar attachments submitted in support of or in opposition to the motion that are essential to the resolution of an issue on appeal.

(d) Items not to be included in the Excerpts of Record. The excerpts of record shall not include brief or other memoranda of law filed in the Superior Court unless necessary to the resolution of an issue on appeal, and shall include only those pages necessary therefor.

(e) Form of the Excerpts of Record. The documents which comprise the excerpts of record need not be certified as true copies, but if possible the Superior Court or agency's "filed" stamp should appear on each document. The documents in the excerpts should be arranged by file date in chronological order with the document with the earliest file date on top. The document with the earliest file date should be paginated beginning with page 1. The trial court docket sheet should always be the last document in the excerpts. The six (6) copies of the excerpts are to be reproduced on letter size light paper by any duplicating or copying process capable of producing a clear black image, and each copy must be securely bound on the left side and must have a tan cover styled as described in Rule 16(a)(2). The excerpts must be consecutively paginated beginning with page 1 of the documents in the clerk's record. If tabs are used, the pages within the tabs must be consecutively paginated. The excerpts must begin with an index organized chronologically describing the documents, exhibits and portions of the reporter's transcript contained therein, the location where the documents and exhibits may be found in the Superior Court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts. The information on the front cover of the excerpts of record should be styled exactly as a brief except that the wording "Excerpts of Record" should be substituted for "Brief of Appellant". In those unusual cases in which the total number of pages in the excerpts exceeds 300 pages, the excerpts shall be filed in multiple volumes, with each volume containing 300 pages or fewer.

(f) Appellee's Supplemental Excerpts of Record. If the appellee believes that the excerpts of record filed by the appellant exclude items which are required under this rule, or if argument in the answering brief requires review of portions of the reporter's transcript or documents not included by appellant in the excerpts, the appellee shall, at the time of the appellee's brief is filed, file supplemental excerpts of record, prepared pursuant to this rule, comprised of the omitted items. The appellee shall file six copies of the supplemental excerpts. The appellee shall serve one copy of the supplemental excerpts of record on each of the other parties.

(g) Further Excerpts of Record.

## GUAM RULES OF APPELLATE PROCEDURES

(1) If the reply brief requires review of portions of the reporter's transcript or documents not included in the previously filed excerpts, the appellant shall, at the time the reply brief is filed, file supplemental excerpts of record. The appellant shall file six (6) copies of the supplemental excerpts and shall serve one (1) copy of such excerpts of record on each of the other parties.

(2) If a supplemental brief filed pursuant to court order requires a review of portions of the reporter's transcript or documents not included in any previously filed excerpts, the party filing the supplemental brief shall, at the time supplemental brief is filed, file additional excerpts of record. The party shall file six (6) copies of the excerpts and shall serve one (1) copy of such excerpts of record one each of the other parties.

(h) Presentence Report. In all cases in which the presentence report is referenced in the brief, the party filing such brief must forward four copies of the presentence report and may forward four copies of any other relevant confidential sentencing documents under seal to the Supreme Court. The filing shall be accomplished by mailing the four copies of the presentence report in a sealed envelope which reflects the title and number of the cases and that four copies of the presentence report are enclosed. The copies of the presentence report shall accompany the brief and excerpts of record. The presentence report shall remain under seal but be provided by the Clerk to the panel hearing the case.

(i) Sanctions for Failure to Comply with Rule 15.

(1) If materials required to be included in the excerpts under these rules are omitted, or irrelevant materials are included, the court may take one or more of the following actions:

(A) strike the excerpts and order that they be corrected and resubmitted;

(B) order that the excerpts be supplemented;

(C) if the Court concludes that a party or attorney has vexatiously or unreasonably increased the cost of litigation by inclusion of irrelevant materials, deny that portion of the costs the Court deems to be excessive; and/or

(D) impose monetary sanctions.

(2) Counsel will be provided notice and have an opportunity to respond before sanctions are imposed.

(j) Prisoner Appeals without Representation by Counsel. In cases involving appeals by prisoners not represented by counsel, the clerk of the Superior Court shall upon receipt of the prisoner's written request forward to the prisoner, within 21 days from the receipt of the request, copies of the documents to comprise the excerpt of record.

### **Rule 16 -- Form of Briefs, Appendices, and Other Papers.**

(a) Form of a Brief.

(1) Reproduction.

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may

## GUAM RULES OF APPELLATE PROCEDURES

be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; and intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case;

(D) the nature of the proceeding (e.g., Appeal, Petition for Permission to Appeal and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing and Margins. The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface. Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 1/2 characters per inch.

(6) Type Styles. A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length.

(A) Page limitation. A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 16(a)(7)(B).

(B) Type-volume limitation.

## GUAM RULES OF APPELLATE PROCEDURES

(i) A principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 16(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(iv) Parties must not append, or incorporate by reference, briefs submitted to the Superior Court or refer this Court to such briefs for their arguments on the merits of the appeal.

(C) Motion to exceed page or word limits. The court looks with disfavor on motions to exceed the page limits and such motions will be granted only for extraordinary and compelling reasons. A motion for permission to exceed page limits must be filed at least 14 days before the brief is due to be filed (7 days in the case of a reply brief) and must be accompanied by an affidavit stating in detail the reasons for the motion.

(D) Certificate of compliance.

(i) A brief submitted under Rule 16(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificates must state either the number of words in the brief; or the number of lines of monospaced type in the brief.

(ii) Form 3 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 3 must be regarded as sufficient to meet the requirements of Rule 16(a)(7)(D)(i)].

(b) Form of Other Parties.

(1) Motion. The form of a motion is governed by Rule 6.

(2) Other Papers. Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 16, with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 16(a)(2). If a cover is used, it must be a white.

(B) Rule 16(a)(7) does not apply.

(c) Signature. Every brief, motion, or other paper filed with the Court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

## GUAM RULES OF APPELLATE PROCEDURES

(d) Local Variation. The Supreme Court must accept documents that comply with the form requirements of this rule. By order in a particular case, the Supreme Court may accept documents that do not meet all of the form requirements of this rule.

### **Rule 17 -- Filing and Service of Briefs.**

(a) Time for Serving and Filing of Briefs. The Appellant shall serve and file his brief within forty (40) days after the date on which the record was filed. The Appellee shall serve and file his brief within thirty (30) days after service of the brief of the Appellant. The Appellant may serve and file a reply to the brief within fourteen (14) days after service of the brief of the Appellee, but, except for good cause shown, a reply brief must be filed at least fourteen (14) days before argument.

(b) Number of Copies to be Filed and Served. An original and seven (7) copies of each brief shall be filed with the Clerk of the Supreme Court, unless the Court, by order in a particular case, shall direct a lesser number, and one (1) copy shall be served on each unrepresented party and on counsel for each party separately represented.

(c) Motion for Extension of Time for Filing Brief. A motion for an extension of time for filing a brief shall be made at least five (5) days before the time period prescribed by subsection (a) or subsection (d)(1) of this Rule for the filing of such brief and shall be accompanied by proof of service. The motion shall be supported by an affidavit stating the time when the brief is due; how many extensions of time, if any, have been granted and, if there have been extensions of time, when the brief was first due; whether any previous requests for extensions of time have been denied or denied in part; the reasons why such an extension is necessary; the amount of extension deemed necessary; and what assurance there is that the brief will be filed within the extended time requested. Such information is required regardless of whether or not opposing counsel stipulates to the extension.

(d) Requirement of Timely Filing.

(1) Parties shall observe the briefing schedule set forth in GRAP 17(a) unless a briefing schedule is established by an order of the Supreme Court or Superior Court. Specific due dates set by Court order are not subject to the additional 3-day allowance for service of papers by mail set forth in GRAP 10(c). The filing of the appellant's brief before the due date shall not advance the due date for the appellee's brief.

(2) In cases controlled by GRAP 17(a), the appellant is responsible for determining the date on which the certificate of record is filed with the Supreme Court and for computing the due date for the opening brief.

(e) Consequence of Late Filing of Briefs and Failure to File Briefs.

(1) Appellant. If an appellant fails to file his brief within the time provided by this Rule, or within the time extended, the brief may thereafter be filed only upon order of the Chief Justice of this Court and late filing shall constitute a waiver of oral argument. The waiver may be set aside in the discretion of the Chief Justice of this Court. If an appellant fails to timely file his brief, an appellee or the Supreme Court may move for dismissal of the appeal.

## GUAM RULES OF APPELLATE PROCEDURES

(2) Appellee. If an appellee fails to file his brief within the time provided by this rule, or within the time extended, the brief may thereafter be filed only upon order of the Chief Justice of this Court and the appellee shall be deemed to have waived oral argument. The waiver may be set aside in the discretion of the Chief Justice of this court. If an appellee chooses not to file a brief, the appellee shall file a statement indicating that no brief shall be filed. Such statement shall be filed and served at the time appellee's brief would otherwise be due.

### **Rule 18 -- Appeal Conferences.**

The Court may direct the attorneys and, when appropriate, the parties to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the Court may preside over the conference which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The Court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement. Such settlement conferences may also be ordered consistent with a settlement conference program, if such program is created by Supreme Court Rule.

### **Rule 19 -- Oral Argument.**

(a) In General.

(1) Party's Statement. Any party may file a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument must be allowed in every case unless a panel of three justices who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The Clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time and place for it. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities. Unless otherwise provided by rule for all cases or for classes of cases, counsel for each side will be allowed thirty (30) minutes for oral argument, which includes questions posed by the Court. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary. Requests may be made by letter addressed to the Clerk of the Supreme Court within seven (7) days of the date fixed for the argument and shall only be granted if good cause therefor is shown. If multiple parties who are represented by

## GUAM RULES OF APPELLATE PROCEDURES

separate counsel or counsel for amicus curiae request argument, the Court may apportion or expand the time according to the respective parties' interests. A party is not obliged to use all of the time allowed, and the Court may terminate the argument whenever in its judgment further argument is unnecessary.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 13.2(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the Court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument. The time allowed for argument shall be the same as provided for in Rule 19(c).

(e) Nonappearance of a Party. If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the Court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the Court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the Court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the Court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the Court directs otherwise. The Clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the Clerk gives notice to remove them.

### **Rule 20 -- Certified Questions.**

(a) Superior Court.

(1) the Superior Court of Guam pursuant to 7 GCA § 4105 may certify to this court a question or proposition of law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and arising in a case or proceeding then pending before the Superior Court. The certificate submitted shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises. Only questions or propositions of law may be certified, and they must be distinct and definite. The Clerk of Court from which the case originates must certify the record and transmit it to this court. If the Chief Justice determines that the local law has not been clearly determined, and it is necessary and desirable to ascertain the local law in order to dispose of the Superior Court's proceeding, then the certificate will be accepted. The Chief Justice may, in his or her discretion, return any certified questions for decision in the first instance by the Superior Court.

(2) If a case is not accepted for certification, the Clerk will notify the respective parties of the denial of the certification and the matter will be returned to the Superior Court for decision of the certified questions. If a certified case is accepted, the Clerk will notify the respective parties and docket the case. Counsel shall then enter their appearances. After docketing, the certificate shall be submitted to the Court for a preliminary examination to

## GUAM RULES OF APPELLATE PROCEDURES

determine whether the case shall be briefed, and/or set for argument. No brief may be filed prior to the preliminary examination of the certificate.

(3) If the court orders that the case be briefed or set for argument, the parties shall be notified and permitted to file briefs. Any portion of the record to which the parties wish to direct the Court's particular attention shall be appended to the brief. The fact that any part of the record has not been appended shall not prevent the parties or the Court from relying on it. The parties shall comply with these rules in the filing of briefs.

(4) The costs of the certification shall be equally borne by the parties. If the Government of Guam is a party to the case, the costs shall be divided by the total number of parties, including the government. However, the government shall not be required to pay its share of the costs.

In cases where one or several questions of law have been certified, and a party maintains the affirmative as to the certified question(s) of law, that party shall be regarded as the Appellant, the opposing party shall be the Appellee. Where there are several questions which have been certified or reserved and a party maintains the affirmative to some and the negative to other certified or reserved questions, the plaintiff shall be regarded as the Appellant, unless, upon application to the Court, an order specifying otherwise is issued by the Court.

### (b) Other Courts.

(1) Power to Answer. The Supreme Court may answer questions of law certified to it by the United States Supreme Court, a court of appeals of the United States, a United States district court, or the highest appellate or intermediate appellate court of any other state, when requested by the certifying court and the following conditions are met:

(A) questions of law of this state are involved in any proceeding before the certifying court which may be determinative of the proceeding;

(B) it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court of this territory.

(2) Method of Invoking. This rule may be invoked by an order of any of the courts referred to in subdivision (a) upon the court's own motion or upon the motion of any party to the proceeding.

(3) Contents of Certification Order. A certification order must contain:

(A) a question of law formulated in a manner allowing the question to be answered by a "yes" or "no";

(B) a statement of all facts relevant to the question certified, showing fully the nature of the controversy in which the question arose;

(C) a statement demonstrating there is no controlling precedent in the decisions of the Supreme Court of this territory.

(4) Preparation of Certification Order. The certification order must be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the Supreme

## GUAM RULES OF APPELLATE PROCEDURES

Court by the clerk of the certifying court. The Supreme Court may require the original or a copy of the record, or of any portion of the record, before the certifying court to be filed with the certification order if, in the opinion of the court, the record or a portion of the record may be necessary in answering the questions.

(5) Fees and Costs. Fees and costs are the same as in civil appeals docketed before the Supreme Court and must be equally divided among the parties unless the certifying court orders otherwise in its certification order.

(6) Briefs and Argument. Unless the certifying court specifies the order and time within which the briefs must be filed and served, all proceedings, including oral argument, in the Supreme Court will be governed by these rules and the plaintiff will be deemed to be the appellant.

(7) Opinion. The written opinion of the Supreme Court stating the law governing the questions certified must be sent by the Supreme Court Clerk to the certifying court and to the parties.

(8) Power to Certify. The Supreme Court, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any state when the following conditions are met:

(A) it appears to the court that there are questions of law of the receiving state involved in any proceeding before the court which may be determinative of the proceeding;

(B) it appears to the court that there are no controlling precedents in the decisions of the highest court of the receiving state.

(9) Procedure for Certifying. The procedure for certification from this territory to the receiving state is that provided in the laws of the receiving state.

(10) Severability. If any provision of this rule or the application of this rule is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application.

(11) Construction. This rule must be construed to effectuate its general purpose, which is to make uniform the law of those states and territories which enact the Uniform Certification of Questions of Law Rule.

(12) Withdrawal of Order. A certification order may be withdrawn by subsequent order of the certifying court before issuance of the written opinion of the Supreme Court.

(13) Short Title. This rule may be cited as the Uniform Certification of Questions of Law Rule.

### **Rule 21 -- Frivolous Appeals.**

Upon motion or sua sponte, if the Supreme Court shall determine that an appeal or cross-appeal is frivolous, it may award damages including attorney's fees and costs.

## GUAM RULES OF APPELLATE PROCEDURES

An original and four (4) copies of the request for attorney's fees shall be filed with the Clerk, with proof of service, within thirty (30) days after the entry of this Court's decision. The request must be filed separately from any cost bill.

Any party from whom attorney fees are requested may file an opposition to the request. An original and four (4) copies of each opposition shall be filed with the Clerk, with proof of service, within fourteen (14) days after service of the request.

No separate hearing shall be had on a request for attorney's fees.

**Rule 21.1 -- Signing of Pleadings, Motions, Briefs, and Other Papers; Representations to Court; Sanctions.** (Adopted pursuant to Promulgation Order No. AP03-005, December 10, 2003)

(a) Signature. Every pleading, written motion, brief, 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, brief, 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 shall, 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 10, but shall not be filed with or

## GUAM RULES OF APPELLATE PROCEDURES

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.

### **Rule 22 -- Costs.**

(a) Against whom Assessed. The following rules apply unless the law provides or the Court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the Court orders.

(b) Costs for and against the Government of Guam. Costs for or against the Government of Guam, its agency, or officer will be assessed under Rule 22(a) only if authorized by law.

## GUAM RULES OF APPELLATE PROCEDURES

(c) Costs of Reproduction. In taxing costs for printing or photocopying documents, the Clerk shall tax costs at a rate not to exceed twenty (20) cents per page, or at actual cost, whichever shall be less.

(d) Bill of Costs; Objections; Insertion in Mandate.

(1) A party who wants costs taxed must within 14 days after entry of judgment file with the Clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 10 days after service of the bill of costs, unless the Court extends the time.

(3) The Clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the Superior Court clerk must upon the Supreme Court's request add the statement of costs, or any amendment of it, to the mandate

(e) Costs on Appeal Taxable in the Superior Court. The following costs on appeal are taxable in the Superior Court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal ; and

(4) the fee for filing the notice of appeal.

### **Rule 23 -- Substitution of Parties.**

(a) Death of a Party.

(1) After Notice of Appeal is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Supreme Court, the party's personal representative may be substituted as a party on motion filed with the Clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 10. If the decedent has no representative, any party may suggest the death on the record, and the Supreme Court may then direct appropriate proceedings.

(2) Before Notice of Appeal is Filed - Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative -- or, if there is no personal representative, the decedent's attorney of record-- may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 23(a)(1).

(3) Before Notice of Appeal is Filed--Potential Appellee. If a party against whom an appeal may be taken dies after entry of a judgment or order in the Superior Court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 23(a)(1).

## GUAM RULES OF APPELLATE PROCEDURES

(b) Substitution for a Reason Other than Death. If a party needs to be substituted for any reason other than death, the procedure described in Rule 23(a) applies.

(c) Public Officer: Identification; Substitution.

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. The Court may require the public officer's name to be added.

(2) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

### **Rule 24 -- Writs of Mandamus and Prohibition and Other Extraordinary Writs.**

(a) Mandamus or Prohibition to a Court; Petition, Filing, Service and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the Clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) (A) The petition must be titled 'In re (name of petitioner).'

(B) The petition must be verified and must state:

- (i) the relief sought;
- (ii) the issues presented;
- (ii) the facts necessary to understand the issue presented by the petition; and
- (iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the Clerk must docket the petition and submit it to the Supreme Court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The Supreme Court may deny the petition or issue an alternative writ without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The Clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The Supreme Court of Guam may invite or order the trial court judge to address the petition or may invite an amicus curiae to do so. The trial court judge may request

## GUAM RULES OF APPELLATE PROCEDURES

permission to address the petition but may not address the petition unless invited or ordered to do so by the Supreme Court.

(5) If briefing or oral argument is required, the Clerk must advise the parties, and when appropriate, the trial court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The Clerk must send a copy of the final disposition to the trial court judge.

(c) Other Extraordinary Writs. An application for an extraordinary writ other than one provided for in Rule 24(a) or Rule 25 must be made by filing a petition with the Clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 24(a) and (b).

(d) Form of Papers; Number of Copies. All papers must conform to Rule 13, 16, and 17(b) and (c). Except by the Court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 13. An original and four (4) must be filed unless the Supreme Court requires the filing of a different number by order in a particular case.

(e) Captions. Petitions for Writs of Mandamus, Prohibition or other extraordinary relief directed to a judge shall bear the title of the Superior Court and shall not bear the name of the Superior Court judge or judges, as Respondent in the caption. Petitions shall include in the caption: the name of each petitioner; the name of the appropriate court as respondent; and the name of each real party in interest. Other petitions for extraordinary writs shall include in the caption: the name of each petitioner; and the name of each appropriate adverse party below as respondent.

(f) Certificate of Interested Parties. Petitions for writs of mandamus or prohibition, and for other extraordinary writs, shall include the certificate as to interested parties required by Rule 13(i) and the statement of related cases required by Rule 13(n).

(g) Effective Date. Writ decisions of the Supreme Court are effective upon issuance.

### **Rule 25 -- Writs of Habeas Corpus.**

When the petitioner is seeking a writ of habeas corpus, the petitioner shall comply with the requirements of 8 GCA Chapter 135. The petitioner must show why the petition has not been brought first in the Superior Court, or if such a petition has been brought, the decision on such a petition.

Proceedings under this Rule will be ex parte but the Court shall permit an answer or reply as permitted in 8 GCA Chapter 135. Neither denial of the petition, without more, nor an order of transfer under authority of 7 GCA § 3108(c)(2), is an adjudication on the merits, and the former action is to be taken as without prejudice to a further application to any other Court for the relief sought.

Writ decisions of the Supreme Court are effective upon issuance.

## GUAM RULES OF APPELLATE PROCEDURES

### **Rule 26 -- Pleadings and Proceedings in Original Action filed in the Supreme Court.**

(a) Pleadings. All pleadings in applications for writs or other relief, filed originally in the Supreme Court, shall conform to the requirements of Guam Rules of Civil Procedure 7 through 15.

(b) Proceedings. In actions filed originally with the Supreme Court, including writs and declaratory judgment proceedings, the proceedings shall conform to the requirements of any applicable statutes and to such orders as may, from time to time, be issued by the Supreme Court.

### **Rule 27 -- Reserved.**

### **Rule 28 -- Determination of Cause; Dismissal; Opinions; Mandate.**

(a) Determination. A decision shall be determined by a majority vote of the panel. The Chief Justice alone, or an Associate Justice sitting in his or her place, may make any appointment orders with respect to an appeal prior to the hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or these rules. The original opinions of the Court shall be filed with the Clerk of the Supreme Court for preservation and when so filed, the same shall be deemed to be recorded.

(b) Opinions and Entry of Judgment.

(1) Opinions. Opinions may be rendered by the assigned Justice, or may take the form of *per curiam* or memorandum opinions. Opinions rendered by the Supreme Court shall be published unless designated otherwise. Memorandum opinions shall not be published. Opinions that are not published shall not be cited in any other action or proceeding except when the opinion establishes the law of the pending case, *res judicata* or collateral estoppel, or in a criminal action or proceeding involving the same respondent.

(2) Entry of Judgment; Notice.

(A) Entry. A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(i) after receiving the Supreme Court's opinion; or

(ii) if a judgment is rendered without an opinion, as the Supreme Court instructs.

(B) Notice. On the date when the judgment is entered, the Clerk must serve on all parties a copy of the opinion -- or the judgment, if no opinion was written -- and notice of the date when the judgment was entered.

**SOURCE:** FRAP 36.

(c) Mandate: Contents; Issuance and Effective Date; Stay.

(1) Contents. Unless the Court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the Supreme Court's opinion, if any, and any direction about costs.

## GUAM RULES OF APPELLATE PROCEDURES

(2) When Issued. The Supreme Court's mandate must issue seven (7) calendar days after the time to file a petition for rehearing expires, or seven (7) calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The Supreme Court may shorten or extend the time.

(3) Effective Date. The mandate is effective when issued.

(4) Staying the Mandate.

(A) On Petition for Rehearing or Motion. The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the Supreme Court orders otherwise.

(B) Pending Petition for Certiorari.

(i) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court of the United States. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(ii) The stay must not exceed ninety (90) days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the Supreme Court of Guam Clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court of the United States' final disposition.

(iii) The Supreme Court of Guam may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(iv) The Supreme Court of Guam must issue the mandate immediately when a copy of a Supreme Court of the United States' order denying the petition for writ of certiorari is filed.

(5) Remand. If the record in any case is remanded to the Superior Court, the court retains jurisdiction over the case. If the case is remanded, this court does not retain jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks review of the proceedings conducted on remand.

**SOURCE:** FRAP 41.

(d) Petitions to the Supreme Court of the United States. If a party files a petition of certiorari in the Supreme Court of the United States, a copy of the petition for certiorari shall be filed with the Supreme Court of Guam.

### **Rule 29 -- Interest on Judgment.**

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the Superior Court judgment is entered.

## GUAM RULES OF APPELLATE PROCEDURES

(b) When the Court Reverses. If the Supreme Court modifies or reverses a judgment with a direction that a money judgment be entered in the Superior Court, the mandate must contain instructions about the allowance of interest.

**SOURCE:** FRAP 37.

### **Rule 30 -- Determination of Causes by the Court En Banc.**

(a) When Hearing or Rehearing En Banc may be ordered. A majority of the justices who are in regular active service may order that an appeal or other proceedings be heard or reheard by the Supreme Court en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the Supreme Court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the Supreme Court (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the Supreme Court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated.

(2) Except by the Supreme Court's permission, a petition for an en banc hearing or rehearing must not exceed fifteen (15) pages, excluding material not counted under Rule 16(a)(7)(B)(iii).

(3) For purposes of the page limit in Rule 30(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately.

(c) Time for Petition for Hearing or Rehearing En Banc. A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 31(a)(1) for filing a petition for rehearing.

(d) Number of Copies. The number of copies shall be an original plus seven (7).

(e) Response. No response may be filed to a petition for an en banc consideration unless the Supreme Court orders a response.

(f) Call for a Vote. A vote need not be taken to determine whether the case will be heard or reheard en banc unless a justice calls for a vote.

## GUAM RULES OF APPELLATE PROCEDURES

(g) Suggestion of a Party for Hearing or Rehearing En Banc. A party may suggest the appropriateness of a hearing or rehearing *en banc*. No response shall be filed unless the Supreme Court shall so order. The Supreme Court will not order a hearing or rehearing without giving the other parties an opportunity to express their view whether hearing or rehearing *en banc* is appropriate. Where no suggestion of appropriateness is filed, the Supreme Court will not ordinarily order a hearing or rehearing *en banc* without giving counsel an opportunity to respond on the appropriateness of such a hearing.

**SOURCE:** FRAP 35.

### **Rule 31 -- Petition for Rehearing.**

(a) Time for Filing; Contents; Answer; Action by Court if Granted.

(1) Time. Unless the time is shortened or extended by order or local rule, a petition for rehearing may be filed after entry of judgment within fourteen (14) days after entry of judgment. But in a civil case, if the Government of Guam or its officer or agency is a party, the time within which any party may seek rehearing is forty-five (45) days after entry of judgment, unless an order shortens or extends the time.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the Supreme Court has overlooked or misapprehended and must argue in support of the petition. An issue not previously briefed by the parties cannot be raised for the first time in a petition for rehearing in the Supreme Court of Guam.

(3) Answer. Unless the Supreme Court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) Action by the Court. If a petition for panel rehearing is granted, the Supreme Court may do any of the following:

- (A) make a final disposition of the case without reargument;
- (B) restore the case to the calendar for reargument or resubmission; or
- (C) issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 16. Copies must be served and filed as Rule 17 prescribes. Unless the Supreme Court permits, a petition for panel rehearing must not exceed fifteen (15) pages.

**SOURCE:** FRAP 40.

### **Rule 32 -- Clerk's Duties.**

(a) General Provisions.

(1) Qualifications. The Clerk of Court must take the oath and post any bond required by law. Neither the Clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

## GUAM RULES OF APPELLATE PROCEDURES

(2) When Court is Open. The Clerk's office is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The Clerk's office with the Clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. The Court may provide by order that the Clerk's office be open for specified hours on Saturdays or on legal holidays.

(b) Records.

(1) The Docket. The Clerk of Court must maintain a docket and an index of all docketed cases in the manner prescribed by the Chief Justice. The Clerk must record all papers filed with the Clerk and all process, orders, and judgments.

(2) Calendar. Under the Court's direction, the Clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the Clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) Other Records. The Clerk must keep other books and records required by the Chief Justice.

(c) Notice of an Order or Judgment. Upon the entry of an order or judgment, the Clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Papers. The Clerk of Court has custody of the Court's records and papers. Unless the Court orders or instructs otherwise, the Clerk must not permit an original record or paper to be taken from the Clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The Clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

**SOURCE:** FRAP 45.

(e) Costs and Fees to be collected by the Clerk. The Clerk shall collect costs and fees provided by these rules in such amounts as may, from time to time, be determined by the Judicial Council.

### **Rule 33 -- Rules by the Supreme Court of Guam.**

The Supreme Court may from time to time make and amend rules governing its practices. In all cases not provided for by rule, the Supreme Court may regulate its practice in any manner and may impose sanctions, including dismissal of an appeal, for non-compliance with its rules and orders.

### **Rule 34 -- Reserved.**

### **Rule 35 -- Devolution of Chief Justice's Duties and System for Appointment of Designated or Pro-Tempore Justices to matters before the Court.**

(a) Performance of Chief Justice's Duties When Unavailable.

## GUAM RULES OF APPELLATE PROCEDURES

(1) The Chief Justice, despite being absent from the territory of Guam or on a leave status due to illness or other cause, remains available so long as he or she is willing and able to administer the Court and to execute the duties of that position. Pursuant to 7 GCA § 3103 (1) and (m), the duties of the Chief Justice shall be exercised by the duly appointed Chief Justice but if he or she is unavailable to act due to illness, leave, absence from the Territory of Guam, or as a result of disqualification, conflict or recusal, the next most senior full-time Associate Justice who is not unavailable will act in his or her stead. If the Chief Justice is unavailable due to absence, leave or general incapacity; the duties associated with the office will pass to the successive Justice. If the Chief Justice is unable to act in a particular matter, that matter and the authority to act upon it will pass to the successive Justice.

(2) As to the above succession, if all full-time Justices are unavailable, then the duty or duties of the Chief Justice shall be assumed by the most senior designated justice who is available. If no designated justice is available, the Chief Justice shall appoint a Justice pro tempore to act as Chief Justice.

(3) For the purposes of this Rule, seniority is determined by the date that each Justice is sworn to perform the duties of that office. Where several Justices, within a category described above, are sworn on the same date the order of their swearing will determine the order of precedence.

(b) Assignments. Three-Justice panels of the court will be comprised of the Court's full-time Justices. When less than three full-time Justices are available the following procedure will be used to appoint designated Justices. The Chief Justice shall appoint the most senior designated Justice to the first such assignment which is made after this Rule is established. In the event that this Justice is unavailable due to illness, absence from the Territory, disqualification, conflict or recusal, the assignment shall fall upon the next most senior part-time Justice. The next subsequent assignment shall fall upon the next most senior designated Justice. The next subsequent assignment shall be made to the next most senior Justice following the Justice who received the previous assignment. When all Justices have been assigned the rotation will commence from the beginning and proceed in a consistent rotation.

### **Rule 36 -- Participation by the Attorney General.**

(a) Generally. In any action, suit or proceeding in this Court to which the Government of Guam or any agency, officer or employee thereof is not a party, wherein the validity of any Act of the *Liheslaturan Guåhan* affecting the public interest is drawn in question, the party challenging the Act shall, within 10 days, provide Notice of such challenge to the Attorney General of Guam. The Court may permit the Government of Guam to intervene or participate as *amicus curiae*, as appropriate.

(b) Acts of Government Questioned. Whenever, in any action or proceeding before this Court, an act, failure to act, or interpretation of law or rules and regulations made by the Government of Guam, or by any agency, instrumentality or officer thereof, is placed into question, and neither the Government of Guam nor the appropriate agency, instrumentality or officer is a party, the party raising the challenge shall notify the Attorney General by sending the required Notice prescribed under Rule 36(a) of these Rules. The Court may permit the Attorney

## GUAM RULES OF APPELLATE PROCEDURES

General to intervene or participate as *amicus curiae*, as appropriate. The Government of Guam shall, subject to the applicable provisions of law and these Rules, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation relating to the question of the law's validity.

(c) Child Support. In any action or proceeding before this court wherein there has arisen a question regarding the support of minor children, and the Family Division of the Attorney General's Office is not a participant in the action or proceeding and the court below has either awarded child support in an amount less than one hundred dollars (\$100.00) per month or has not required a mandatory wage garnishment, the court may so notify the Family Division and permit it to participate as provided in 5 GCA Chapter 34.

(d) Notification. Within ten (10) days after receiving notice from the Court pursuant to this Rule, the Attorney General shall notify the Court whether the Government of Guam intends to intervene or participate as *amicus curiae* in a particular appeal.

**NOTE:** the authority for this Rule comes from several sources. Generally, 5 GCA § 30102, where it states in the first sentence: "the Attorney General shall have cognizance of all legal matters in which the government of Guam is in anywise interested." Title 5 GCA Chapter 34, Enforcement of Support, contains various provisions giving that Division the right and duty to participate in all cases involving certain types of child support, or the lack thereof.

### **Rule 37 -- Anders Brief.**

After conscientious examination of the record, should counsel for the Defendant-Appellant determine that the case is wholly frivolous, counsel shall advise the Court and request permission to withdraw from the case. Counsel shall file, in conjunction with a Motion to Withdraw as counsel, a brief, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, *reh'g denied*, 388 U.S. 924, 87 S.Ct. 2094 (1967), which refers to anything in the record which might arguably support an appeal, and with citations to the record and applicable legal authority. The motion and brief shall be accompanied by proof of service on the defendant. The cover of the opening brief shall state that the brief is being filed pursuant to *Anders v. California*. The filing of the motion to withdraw as counsel along with a proposed *Anders* brief serves to vacate the previously established briefing schedule.

To facilitate this Court's independent review of the Superior Court proceedings, counsel shall designate all appropriate reporters transcripts, including but not limited to complete transcripts for the plea hearing and sentencing hearing, and shall include the transcripts of the excerpts of record.

When an attorney has properly moved for leave to withdraw pursuant to *Anders* and has included all appropriate reporter's transcripts, the Court will establish a briefing schedule permitting the defendant to file a *pro se* supplemental opening brief raising any issues that defendant wishes to present. The order will also direct Appellee by a date certain to file an answer in response. The Court shall then consider the *Anders* brief, the *pro se* supplemental opening brief the Appellee's response and fully examine the record before making a determination as to whether the appeal shall proceed or be dismissed.

## GUAM RULES OF APPELLATE PROCEDURES

Should the Court determine that the case should proceed, the Court shall either grant counsel's motion to withdraw and appoint new counsel or require counsel to remain on the case and represent and assist the Defendant-Appellant in his appeal.

*Anders* briefs shall conform to the form requirements of Rule 16 and shall be served and filed as prescribed by Rule 17.

### **Rule 38 -- Rules Governing Electronic Filing.** (Effective April 29, 2004)

(a) General Provisions.

(1) Short Title. These rules may be cited as "e-filing rules."

(2) Definitions. The following terms in this Rule shall be defined as follows:

(A) "Electronic Filing Service Provider" (EFSP) means the service provided by the court for e-filing and e-service of documents via the Internet. The service may be accessed at [www.guamsupremecourt.com](http://www.guamsupremecourt.com) or in person at the courthouse using a Public Access Terminal.

(B) "Public Access Terminal" means a publicly accessible computer provided by the court for the purposes of allowing e-filing and viewing of public records. The public access terminal shall be located in the Clerk's office at the courthouse and made available during normal business hours.

(C) "Electronic Filing" (e-file) means the electronic transmission of documents to the court, and from the court for the purposes of filing.

(D) "Electronic Service" (e-service) means the electronic transmission of documents to a party, attorney or representative under these rules.

(3) Scope of Rules.

(A) As of the effective date of this rule, except as expressly provided herein, the Supreme Court of Guam shall accept electronic filing and service of pleadings and other documents designated in this rule as valid.

(B) Unless modified by approved stipulation or order of the court, all Guam Rules of Appellate Procedure, local rules, and orders of the court shall continue to apply to cases which are subject to electronic filing.

(C) The court and clerk's office may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these rules.

(D) Prohibited E-file Documents. The following pleadings may not be e-filed shall be filed conventionally:

(i) Juvenile Cases

(ii) Sealed Documents

(E) The court may at any time mandate electronic filing and service of pleadings in designated cases. For designated cases, the court shall not accept or file any pleadings or instruments in paper form. Parties shall e-file a document either:

## GUAM RULES OF APPELLATE PROCEDURES

(i) By registering to use the EFSP;

(ii) In person, by electronically filing through the Public Access Terminal. Parties filing in this manner shall be responsible for furnishing the pleading or instrument on a formatted 3 ½" computer disk, CD ROM, or any other disk compatible with the clerk's office-system to be uploaded in person.

### (4) Authorized Users

(A) For purposes of accessing the EFSP over the Internet, the following users are authorized to register as EFSP users:

(i) Attorneys licensed to practice law in Guam

(ii) Pro hac vice attorneys

(iii) Justices, judges, and their staff

(iv) Court administrative staff, including technical support staff

(v) Pro se litigants

(B) The public, whether or not authorized to file documents through the EFSP, may view all documents filed in the Supreme Court over the Internet through use of the electronic Library accessible at [www.guamsupremecourt.com](http://www.guamsupremecourt.com).

(5) Effective Date. These rules shall become effective on April 29, 2004.

(6) Electronic Case File. The Clerk may maintain the original and official case file in electronic format.

### (b) Filing and Service Procedures

#### (1) Registration Requirements

(A) Persons who are authorized users and who desire to e-file or e-serve shall register with the Clerk of the Supreme Court. Upon receipt of a properly executed user registration agreement, the Clerk shall assign to the user a confidential login and password to the system. No attorney or other user shall knowingly authorize or permit his or her user name or password to be utilized by anyone.

(B) Registered users of the system shall notify the Clerk within 10-days of any changes in firm name, delivery address, fax number or email address.

(2) Time and Effect of E-Filing. Any pleading filed electronically shall be considered as filed with the court when the transmission to the EFSP is received by the court. Any document e-filed and received by 11:59 p.m. (Chamorro Standard Time, which is GMT + 10:00) shall be deemed filed on that date. The EFSP is an agent of the court for the purpose of electronic filing, receipt, service and retrieval of electronic documents. Upon completion of filing, the EFSP shall issue a confirmation receipt that includes the date and time of receipt. The confirmation receipt shall serve as proof of filing. In the event the court rejects the submitted documents following review, the documents shall not become part of the

## GUAM RULES OF APPELLATE PROCEDURES

official record and the filer will receive notification of the rejection. Users may be required to re-file the instruments to meet necessary filing requirements.

### (3) Format of Documents.

(A) All electronically filed and served pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings, subject to the following exception: the rules requiring that briefs or other documents contain designated colored covers shall not apply to electronically filed documents.

(B) The electronic title of each pleading or other document shall include all information required by the applicable rules governing the particular pleading or document.

(C) All motions, papers, and briefs, or other similar documents filed electronically with the court, including all exhibits, attachments, and other like documents, whether accompanying motions, papers, or briefs, or not, shall be filed in Portable Document format (PDF).

(D) If filing any document electronically, only one copy shall be electronically transmitted to the court, and the original must be made available upon the court's request.

### (4) Payment of Filing Fees.

(A) Registered users shall pay statutory filing fees for e-filed documents electronically to the Court through their EFSP. Filing fees are due and payable at the time of filing.

(B) The EFSP may charge registered users additional fees to deliver, access and use the service. These fees are payable to the court through the EFSP at the time of the filing and are in addition to regular filing fees.

### (5) Signatures.

(A) Every pleading, document and instrument electronically filed or served shall be deemed to have been signed by the justice, judge, clerk, attorney or declarant and shall bear a scanned facsimile or typographical signature of such person, along with the typed name, address, telephone number, and Bar number of a signing attorney. Typographical signatures shall be in the form of a conforming signature (“/s/”).

(B) In the case of a signatory who is a registered EFSP user, such document shall be deemed signed provided that such document is filed using the User Name and Password of the signatory.

(C) Documents containing signatures of third-parties (i.e., unopposed motions, affidavits, stipulations, etc.) may also be filed electronically bearing a scanned or typographical signature of the third party. In the case of a signatory who is not an EFSP user, or who is an EFSP user but whose User Name and Password will not be utilized in the electronic filing of the document, as in the case of documents requiring multiple

## GUAM RULES OF APPELLATE PROCEDURES

signatures, the filer of the document shall list thereon all the names of any other signatory or signatories. The filer shall attest that concurrence in the filing of the document has been obtained from each of the other signatories, or from the single signatory (in the case, e.g., of a declaration) which shall serve in lieu of their signature(s) on the document. The filer's attestation may be incorporated in the document itself, or take the form of a declaration to be attached to the document.

(D) Any filing made under this rule shall bind the signatory as if the document were physically signed and filed, and shall function as the signatory's signature, whether for purposes of Rule 21.1 of the Guam Rules of Appellate Procedure, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(E) Unless otherwise ordered by the court or clerk, a printed copy of all documents filed or served electronically, including original signatures, shall be maintained by the party filing the document and shall be made available, upon reasonable notice, for inspection by other counsel, the Clerk or Court. Parties shall retain originals until final disposition of the case and the expiration of all appeal opportunities. From time to time, it may be necessary to provide the Clerk with a hard copy of the electronically filed document.

### (6) Electronic Service.

(A) Delivery of e-service documents as permitted under these rules to other registered users shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through the EFSP.

(B) E-service is accomplished by use of the other party's or attorney's correct and current electronic mail address as registered with the Clerk's office. A "Notice of Electronic Filing" is generated automatically by the EFSP system upon completion of an electronic filing. The "Notice of Electronic Filing" when e-mailed to the e-mail addresses of record in the case acts as the proof of service.

(C) E-service shall be deemed complete when the transmission to the EFSP is completed.

(D) For the purpose of computing time to respond to documents received via e-service, any document served on a day or at a time when the court is not open for business shall be deemed served at the time of next opening of the court for business. When a document is e-served, the responding party shall be given one additional day, added to the number of days provided by the applicable rule, to respond to the document.

(E) Parties who register with the Court to use the EFSP for filing documents to a case shall consent to receive e-service documents, other than service of subpoenas.

(7) System or User Filing or Service Errors. If the electronic filing or electronic service does not occur because of (1) an error in the transmission of the document to the EFSP or served party which was unknown to the sending party, (2) a failure to process the

## GUAM RULES OF APPELLATE PROCEDURES

electronic document when received by the EFSP, (3) the party was erroneously excluded from the service list, or (4) other technical problems experienced by the filer or recipient, the court may upon satisfactory proof enter an order permitting the document to be filed *nunc pro tunc* to the date it was first attempted to be filed electronically. Or in the case of service, the party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or period within which any right, duty or other act must be performed.

## **APPENDIX OF FORMS**

2  
3 **IN THE SUPERIOR COURT OF GUAM**

4		)	Civil Case No. _____
	<b>A.B.,</b>	)	
5		)	
	Plaintiff - [Appellant or Appellee,]	)	
6		)	
	<b>vs.</b>	)	<b>NOTICE OF APPEAL</b>
7		)	
	<b>C.D.,</b>	)	
8		)	
	Defendant - [Appellant or Appellee.]	)	
9	_____	)	

10 **TO: THE CLERK OF THE SUPERIOR COURT OF GUAM:**

11 Pursuant to the Guam Rules of Appellate Procedure, Notice is hereby given that \_\_\_\_\_

12 (here name all parties taking appeal), (plaintiffs) (defendants) in the above named case, hereby

13 appeal(s) to the Supreme Court of Guam (from the final judgment)(from an order (describing it))

14 entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

15  
16 (s) \_\_\_\_\_

17 Attorney for \_\_\_\_\_

18 Address: \_\_\_\_\_

2  
3 **IN THE SUPERIOR COURT OF GUAM**

4	)	Criminal Case No. _____
	)	
5	)	
	)	
6	)	
	)	
	)	<b>NOTICE OF APPEAL</b>
7	)	
	)	
8	)	
	)	
9	)	

10 **TO: THE CLERK OF THE SUPERIOR COURT OF GUAM:**

11 Pursuant to the Guam Rules of Appellate Procedure, Notice is hereby given that \_\_\_\_\_  
12 (here name all parties taking appeal), (plaintiffs) (defendants) in the above named case, hereby  
13 appeal(s) to the Supreme Court of Guam (from the final judgment)(from an order (describing it))  
14 entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

15 (Describe offense for which the defendant was indicted and a description of the offense the defendant  
16 was convicted of and the date when the verdict was brought down.)

17 (Describe the sentence imposed and whether the defendant is currently released on bail.)

18  
19 (s) \_\_\_\_\_  
Attorney for \_\_\_\_\_  
Address: \_\_\_\_\_  
20  
21  
22  
23  
24  
25



FORM 2 (*In Forma Pauperis*)

- b. If the answer is “no” state the date of last employment and the amount of the salary and wages per month which you received.

---

---

2. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or other form of self-employment?       Yes  No
- b. Rent payments, interest or dividends?       Yes  No
- c. Pensions, annuities or life insurance payments?       Yes  No
- d. Gifts or inheritances?       Yes  No
- e. Any other sources?       Yes  No

If the answer to any of the above is “yes,” describe each source of money and state the amount received from each during the past twelve months.

---

---

---

---

---

3. Do you own any cash, or do you have money in checking or savings accounts? (Include any funds in prison accounts)     Yes     No

If the answer is “yes,” state the total value of the items owned:

---

---

---

---

---

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?     Yes     No

If the answer is “yes,” describe the property and state its approximate value.

---

---

---

---

---

FORM 2 (*In Forma Pauperis*)

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

---

---

---

---

---

---

---

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Executed on \_\_\_\_\_ (Date) \_\_\_\_\_ Signature of Applicant

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_, day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

-----

**ORDER**

IT IS HEREBY ORDERED that the application is granted. Let the applicant proceed without prepayment of costs or fees or the necessity of giving security thereof.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Justice for the Supreme Court of Guam

**GRAP 16(a)(7)(B) Certificate of Compliance with Type-Volume Limitation**

This brief complies with the type volume limitation of Rule 16(a)(7)(B) because this brief contains \_\_\_\_\_ number of words (or indicate number of lines of monospaced type in the brief),excluding the parts of the brief otherwise exempted from Rule 16(a)(7)(B)(iii).

(s) \_\_\_\_\_

Attorney for: \_\_\_\_\_

Dated: \_\_\_\_\_