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CH. 7 THE PRODUCTION OF EVIDENCE

CHAPTER 7
THE PRODUCTION OF EVIDENCE

- Article 1. By Whom Produced.
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ARTICLE 1
BY WHOM PRODUCED

- § 7101. Whom to Explain Altered Writing.
- § 7102. Proof of Citizenship or Residence.

§ 7101. Whom to Explain Altered Writing.

The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he does that, he may give the writing in evidence, but not otherwise.

SOURCE: CCP § 1982.

CROSS-REFERENCES: § 901 of Division 1 (GRE).

§ 7102. Proof of Citizenship or Residence.

Whenever in any action or proceeding, civil or criminal, brought by or in the name of the government of Guam, or by any public board or officer on behalf thereof, to enforce any law which denies any right, privilege or license to any person not a citizen of the United States, or to a person not a resident of Guam, and whenever in any action or proceeding in which the government of Guam or any public board or officer acting on behalf thereof, is or becomes a party, it is alleged in the pleading therein filed on behalf of the government of Guam or of such board or officer thereof, that such right, privilege or license has been exercised by a person not a citizen of the United States, or by a person not a resident of Guam, as the case may be, the burden shall be upon the party for or on whose behalf such pleading

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was filed to establish the fact that such right, privilege or license was exercised by the person alleged to have exercised the same, and upon such fact being so established, the burden shall be upon such person or upon any person, firm or corporation claiming under or through the exercise of such right, privilege or license to establish the fact that the person alleged to have exercised such right, privilege or license was, at the time of so exercising the same, a citizen of the United States or was a resident of Guam, as the case may require, and was at set time legally entitled to exercise such right, privilege or license.

SOURCE: CCP § 1983, as modified.

COMMENT: The only modification is to delete reference to eligibility to become a U.S. citizen and citizenship of Guam, as such categories do not exist. The former has been abolished by the United States and one cannot be a citizen of a non-sovereign territory.

ARTICLE 2
MEANS OF PRODUCING EVIDENCE

- § 7201. Subpoenas, How Issued.
- § 7202. Subpoenas Served if Witness Concealed.
- § 7203. Person Present Compelled to Testify.
- § 7204. Disobedience to Subpoena for Out-of-Court Appearance.
- § 7205. Forfeiture for Disobeying Subpoena.
- § 7206. When Warrant May Issue to Bring Witness.
- § 7207. Content of Warrant.
- § 7208. How Prisoner Brought to Court.
- § 7209. Motion to be Made by Party.

§ 7201. Subpoenas, How Issued.

A subpoena is issued as follows:

1. To require attendance before a court, or at the trial of an issue therein, as provided in Rule 45 of the Guam Rules of Civil Procedure. The Guam Rules of Civil Procedure are those Rules of Civil Procedure for the Superior Court of Guam adopted by the Judicial Council of Guam on August 20, 1975, having an effective date of December 26, 1975, and as amended from time to time as provided in law.

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2. To require attendance out of court, in cases not provided for in subparagraph (1), before a judge, justice or other officer authorized to administer oaths or to take testimony in any matter under the laws of Guam, it is issued by the judge, justice or other officer before whom the attendance is required.

SOURCE: CCP § 1986 modified.

CROSS-REFERENCES: For examples of administrative subpoenas see 5 GCA § 5111 - Suruhanu; 21 GCA Chapter 57 - Contractors' License Board; and 8 GCA § 75.45 - Attorney General with respect to Grand Juries.

COMMENT: Subparagraph (1) and the second paragraph of subparagraph (2) of former CCP § 1986 deal with subpoenas before courts, which matter is fully covered in Rule 45, GRCP.

This Section has been modified to refer only to subpoenas to attend matters and hearings outside of court. Reference only is made to the Rules of Civil Procedure.

§ 7202. Subpoenas Served if Witness Concealed.

If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any court or judge, or any officer issuing the subpoena may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Director of Public Safety or any peace officer serve the subpoena; and the Director of Public Safety or such peace officer must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

SOURCE: CCP § 1988.

COMMENT: Normally, in civil matters, subpoenas are served by persons not peace officers or officers of the Territory. Therefore, this Section is an exception to be used when the circumstances stated therein warrant.

§ 7203. Person Present Compelled to Testify.

A person present in court, or before a judicial officer, or before any body or person authorized to issue subpoenas, may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

COMMENT: This Section has been expanded to make the same provisions applicable in court applicable to any other proceeding (usually administrative) wherein the body or officer could compel attendance by subpoena.

§ 7204. Disobedience to Subpoena for Out-of-Court Appearance.

When the subpoena in any case requires the attendance of the witness before an officer or referee out of court, it is the duty of such officer or referee to report any such disobedience or refusal to the court, and the

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witness must not be punished for any refusal to answer a question or to subscribe an affidavit or deposition, unless, after a hearing upon notice, the court orders him to so answer or subscribe, and then only for disobedience to such order. Any judge, justice or other officer mentioned in subparagraph (2) of 7201 may report any disobedience to refusal to the court having jurisdiction, and such court thereupon has power, upon notice, to order the witness to perform the omitted act, and any refusal or neglect to comply with such order may be punished as a contempt of such court.

SOURCE: CCP § 1991 modified.

COURT DECISIONS: This Section is modified by deleting reference to the punishment for disobedience to subpoenas issued by a court. Such provisions are contained in Rule 45(e), GRCP. However, the GRCP provides no means by which subpoenas are to be enforced by other officers not of the court. Thus, this Section is required for that purpose.

§ 7205. Forfeiture for Disobeying Subpoena.

Where a witness disobeys a subpoena, and disobedience thereof is not covered in the Guam Rules of Civil Procedure, he forfeits, in addition to any other penalty for contempt of court, to the party aggrieved the sum of Fifty Dollars (\$50) and all damages which he may have caused by his failure to attend, which forfeiture and damages may be recovered in a civil action.

SOURCE: CCP § 1992 modified.

COMMENT: The forfeiture is increased on account of inflation. This Section is clarified to separate it from the Rules of Civil Procedure and to show that the forfeiture is not a penalty payable to the Court, but to the party aggrieved.

§ 7206. When Warrant May Issue to Bring Witness.

In case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to any peace officer of Guam to arrest the witness and bring him before the court of officer where his attendance was required.

SOURCE: CCP § 1993.

CROSS-REFERENCE: GRCP Rule 37.

§ 7207. Content of Warrant.

Every warrant of commitment, issued by a court or officer pursuant to this Chapter, must specify therein particularly the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to

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this Chapter, or pursuant to the Guam Rules of Civil Procedure, must be directed to the Director of Public Safety, or other peace officer, and must be executed by him in the same manner as process issued by a court having jurisdiction.

SOURCE: CCP § 1994.

§ 7208. How Prisoner Brought to Court.

If the witness be a prisoner, confined within Guam, an order for his examination in confinement upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined may be made by the court in which the action or special proceeding is pending.

SOURCE: CCP § 1995 modified grammatically only.

§ 7209. Motion to be Made by Party.

An order pursuant to 7208 can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness and its materiality.

SOURCE: CCP § 1996 modified to show its connection to 7208.

ARTICLE 3
MANNER OF PRODUCING EVIDENCE

§ 7301. Modes of Testimony.

§ 7302. Affidavit Defined.

§ 7303. Deposition Defined.

§ 7304. Oral Examination Defined.

§ 7301. Modes of Testimony.

The testimony of a witness may be taken by affidavit, by deposition, or by oral examination.

SOURCE: CCP § 2002 modified grammatically only.

§ 7302. Affidavit Defined.

An Affidavit is a written declaration under oath, made without notice on an adverse party.

SOURCE: CCP § 2003.

§ 7303. Deposition Defined.

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A Deposition is that type of testimony described in Rules 26-37 of the Guam Rules of Civil Procedure.

SOURCE: New Section. Compare CCP § 2004.

COMMENT: The scope of depositions is fully covered by the Guam Rules of Civil Procedure. Likewise, the means by which all discovery proceedings are to be enforced is covered by the Rules and need not be covered here.

§ 7304. Oral Examination Defined.

An oral examination is an examination in the presence of the judge or tribunal which is to decide the fact or act upon it, the testimony being heard by the judge, jury or tribunal from the lips of the witness.

SOURCE: CCP § 2005 modified to include juries.

ARTICLE 4
AFFIDAVITS

§ 7401. Use of Affidavits.

§ 7402. Affidavit to be Used in Guam.

§ 7403. Affidavit Taken Out of Guam.

§ 7404. Affidavits Taken in Foreign Countries.

§ 7405. Certificate of the Clerk of Court.

§ 7401. Use of Affidavits.

An affidavit may be used as specified in this Code, in any other law of Guam, or in the Guam Rules of Civil Procedure for the purpose specified therein.

SOURCE: Compare CCP § 2009.

CROSS-REFERENCE: GRCP Rule 11.

§ 7402. Affidavit to be Used in Guam.

An affidavit to be used before any court, judge or officer of Guam may be taken before any officer or person authorized to administer oaths.

SOURCE: CCP § 2012.

§ 7403. Affidavit Taken Out of Guam.

An affidavit taken in any state, territory, possession, commonwealth or trust territory of the United States, or in the District of Columbia, to be used

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in Guam, may be taken before any notary public in said place, or before any judge or clerk or a court of record having a seal.

SOURCE: CCP § 2013 modified to reflect territories, etc.

CROSS-REFERENCES: See 5 GCA Chapter 34 relative to Notaries Public and the taking of affidavits outside of Guam.

§ 7404. Affidavits Taken in Foreign Countries.

An affidavit taken in a foreign country to be used in Guam may be taken before an ambassador, minister, consul, vice consul or consular agent of the United States, or before any judge or a court of record having a seal in such foreign country.

SOURCE: CCP § 2014.

§ 7405. Certificate of the Clerk of Court.

When an affidavit is taken before a judge or a court in any state, territory, possession, commonwealth or trust territory of the United States, or in a foreign country, or in the District of Columbia, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of court under the seal thereof.

SOURCE: CCP § 2015 modified to reflect territories, etc.

ARTICLE 5
TAKING DEPOSITIONS OUT OF GUAM

§ 7501. Taking Deposition of Witness Out of Guam.

§ 7502. Trial Not to be Postponed.

§ 7503. Notice Dispensed with in Certain Circumstances.

§ 7501. Taking Deposition of Witness Out of Guam.

The deposition of a witness out of Guam may be taken pursuant to the Guam Rules of Civil Procedure and, in addition, the party taking the deposition may utilize such procedures as may be required by the place where the deposition is taken, if such procedures are material to the case or deposition.

SOURCE: New Section.

COMMENT: See FRCP Rule 28. The Guam Rules have omitted this Rule, but attorneys testified that Guam Rules adequately cover all depositions taken off Guam for use in Guam. Additional procedures are permitted if required in some circumstance

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not now apparent. Former CCP § 2024 et seq. provide detailed and cumbersome procedures for the taking of depositions out of Guam. These procedures have not been followed in years.

§ 7502. Trial Not to be Postponed.

A trial or other proceeding must not be postponed by reason of depositions or interrogatories not returned, except upon evidence, satisfactory to the court, that the testimony of the witness is necessary and that proper diligence has been used to obtain it.

SOURCE: CCP § 2027 modified to omit reference to commissions.

§ 7503. Notice Dispensed with in Certain Circumstances.

In all cases where service of summons has been had by publication as provided by law and after default has been duly entered, and it appears by affidavit that the residence of a party to the action is unknown and the witness resides out of Guam, then in such cases the notice required by the Guam Rules of Civil Procedure shall be dispensed with.

SOURCE: CCP § 2028 modified to reflect GRCP.

ARTICLE 6
DEPOSITIONS IN GUAM

NOTE: CCP § 2031 and 2032 are deleted as they refer to matters fully covered in the Guam Rules of Civil Procedure. The substance of this Article concerns depositions taken in Guam for use outside of Guam, just the opposite to that in Article 5.

- § 7601. Depositions in Guam for use Elsewhere.
- § 7602. How to Procure Witness Upon Commission.
- § 7603. Compelling Witnesses to Appear and Testify.
- § 7604. How, if Commission Not Issued.
- § 7605. Deposition, How Taken.
- § 7606. Acknowledgment of Deeds.

§ 7601. Depositions in Guam for use Elsewhere.

Any party to an action or special proceeding in a court or before a judge of a state, territory, possession, or trust territory of the United States, or of the District of Columbia, may obtain the testimony of a witness residing in Guam, to be used in such action or proceeding in the cases mentioned in this Article.

SOURCE: CCP § 2035 modified.

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COMMENT: Modification concerns the reference to territories, etc., and to the construction of this Article.

§ 7602. How to Procure Witness Upon Commission.

If a commission to take such testimony has been issued by the court before which an action or proceeding is pending, or by a judge thereof, on exhibiting the commission to a judge of the Superior Court, with an affidavit showing the materiality of the testimony, such judge may issue a subpoena to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place within Guam.

SOURCE: CCP § 2036.

COMMENT: The Superior Court is referenced, instead of the District Court and the word state is changed to jurisdiction.

§ 7603. Compelling Witnesses to Appear and Testify.

Whenever any mandate, writ, or commission is issued out of any court of record in any other territory, state, district, or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness or witnesses in Guam, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in Guam.

SOURCE: CCP § 2036a.

§ 7604. How, if Commission Not Issued.

If a commission has not been issued, and it appears to the judge, by affidavit satisfactory to him:

1. That the testimony of the witness is material to either party, and that the witness resides in Guam;
2. That a commission to take the testimony of such witness has not been issued; and
3. That, according to the law of the place where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such judge, will be received in the action or proceeding then he must issue his subpoena requiring the witness to appear and testify before him at a specified time and place.

SOURCE: CCP § 2037.

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§ 7605. Deposition, How Taken.

Upon the appearance of the witness, the judge must cause his testimony to be taken in writing, and must certify and transmit the same via the Governor of Guam, or directly if the law of the place wherein the action or proceeding is pending permits, to the court or judge before whom the action or proceeding is pending, in such manner as the law of that jurisdiction requires.

SOURCE: CCP § 2038.

§ 7606. Acknowledgment of Deeds.

Deeds or other instruments affecting land situated in the District of Columbia or any state or territory or trust territory of the United States, may be acknowledged in Guam before any notary public or judge appointed therein by proper authority or by any officer therein who has ex officio the powers of a notary public; provided, that the certificate of the Governor or Acting Governor to the effect that the notary taking such acknowledgment was in fact the officer he purported to be.

SOURCE: CCP § 2039.

CROSS-REFERENCE: This Section follows 48 U.S.C.A. 1421f-1. See also 5 GCA Chapter 34 regarding Notaries Public.

NOTE: CCP § 2042-2055 are deleted from this Division as the subject matter, presentation of evidence, is fully covered by Division 1 of this Title and the Guam Rules of Civil Procedure.
