

**7 GCA CIVIL PROCEDURE
CH. 5 THE JUDICIAL COUNCIL**

**CHAPTER 5
THE JUDICIAL COUNCIL**

2014 NOTE: This Chapter was added by P.L. 21-147:2 (Jan. 14, 1993), which added Chapters 1 through 10 of Title 7 and reorganized the judicial branch of Guam. Unless otherwise indicated, references in the Source notes are to P.L. 21-147. Notes and Comments from the Compiler in prior print publications of the GCA have been retained to assist with understanding the legislative history of this Chapter.

Provisions in this chapter addressing judicial discipline and removal, including §§ 5102(a) and 5104 to 5109, have been superseded by the promulgation of the Guam Rules for Judicial Disciplinary Enforcement. The Rules for Judicial Disciplinary Enforcement are the product of the Subcommittee on Judicial Ethics, which was formed by the Judicial Council of Guam in 2003 and tasked with reviewing the system of judicial discipline. The subcommittee drafted rules and requested comments from judicial officers and members of the Guam Bar Association, and submitted its report to the Supreme Court of Guam recommending adoption of the rules. The rules were adopted on March 27, 2006, and formally promulgated on September 5, 2006, PRM 06-002-001 (Sept. 5, 2006). The rules were amended on April 13, 2007, December 23, 2011, and December 28, 2012. The current rules may be found on the Supreme Court of Guam website at www.guamcourts.org/supreme.html.

- § 5101. Judicial Council.
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§ 5101. Judicial Council.

(a) There shall be a Judicial Council (the *Council*). All full-time Justices of the Supreme Court shall sit on the Judicial Council. Two (2) Superior Court Judges shall also sit on the Judicial Council, which shall include the Presiding Judge who shall appoint the remaining Judge. Should a Supreme Court member leave the bench, then the Presiding Judge shall remove one (1) Superior Court

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member until such time as a new Supreme Court Justice is nominated, confirmed and seated on the Supreme Court. The Chairperson of the Council shall be the Chief Justice. In the event of absence of the Chief Justice, the senior full-time Associate Justice shall act as Chairperson. At no time shall a designated Justice or Judge or a Justice or Judge *pro tempore* sit as a member of the Judicial Council.

(b) The Presiding Judge, in his or her absence, or the absence of the other Superior Court Judge, may appoint from among the Judges an alternate to sit on the Judicial Council to ensure an adequate number of members from the Superior Court of Guam.

(c) The term of the member of the Council appointed by the Presiding Judge shall be for three (3) years. If a member is replaced, the replacement member shall only serve out the remaining term of the member replaced.

(d) The quorum of the Council shall be a majority of the sitting members, whether present or not. The vote of a not less than a majority of the sitting members shall be required for any action by the Council.

(e) The Council shall promulgate its own rules for its conduct and operation. Said rules shall include provisions designed to comply with the spirit and intent of 5 GCA Chapter 8, the Open Government Law of Guam.

(f) The Council shall be attached to the Judicial Branch of the government of Guam.

SOURCE: Amended by P.L. 23-86 (4/29/96) to increase number of judges and justices on Council and to remove President of Bar Association. Repealed and reenacted by P.L. 24-139:33. Amended by P.L. 27-31:15 to reflect the integration of the Guam Court system. Also, the Attorney General and the Chairman of the Legislature's Judiciary Committee (or equivalent) were removed from the Council.

COURT DECISIONS: The Supreme Court, in *Pangelinan v. Gutierrez*, 2000 Guam 11 (2000); affirmed by the Ninth Circuit as 276 F.3d 534 (1/10/2002), held P.L. 24-139 not to have existed at all as a public law because it was "pocket vetoed" by the Governor. Therefore, this section reverts to the way it read upon its amendment by P.L. 26-86:1 as there have been no changes in the law since that time. The main difference is that the

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Attorney General is returned to the Judicial Council, as are representatives of the Supreme Court.

(1992) COMMENT: The 1992 Act modifies the 1985 proposed composition of the Council, returning it to its existing membership plus the Chief Justice.

1985 SOURCE: New Section.

1985 COMMENT: The former Judicial Council will cease to exist with the creation of the Supreme Court. The governing functions of the Judicial Council will be assumed by the Supreme Court, as is done in the several states. This Commission [renamed "judicial Council" in 1992 Act] will assume new functions related to the business of the courts, but not governing them.

Both the Attorney General and the Chairperson of the Committee of Federal, Foreign and Legal Affairs of the Legislature (or its successor) remain on this Commission. However, unlike former law, all judges are members of the Commission, as it was before P.L. 12-85. Since the Commission [Council] no longer governs the courts, the problem of separation of powers formerly existing has ceased to exist.

§ 5102. Powers of the Judicial Council.

The Council shall have the following powers:

(a) To initiate, receive and consider charges concerning alleged misconduct or incapacity of any Justice or Judge of the Courts and to form subcommittees that will determine and make recommendations as to the removal of any Justice or Judge;

(b) To adopt policies for the Court and make recommendations to *I Liheslatura* as may be deemed appropriate for the effective and expeditious administration of the judicial system;

(c) To make other recommendations regarding the administration of Justice to *I Maga'lahen Guåhan*, or to *I Liheslatura* as it deems proper;

(d) Notwithstanding any other provision of law, to adopt a pay plan and pay schedules for the classified and unclassified employees of the Judicial Branch consistent with the government-wide plan pursuant to Section 13 of Public Law 29-52 and Executive Order 2006-21, or the transmittal of the

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“Government of Guam Competitive Wage Act of 2014” to *I Liheslaturan Guåhan* on January 15, 2014, subject to appropriations as provided by *Liheslaturan Guåhan*. Nothing in this Subsection (d) shall repeal or negate the provisions contained in Public Law 32-136 applicable to non-Judicial Branch employees; nor shall this Subsection (d) prohibit the retroactive payment to January 15, 2014, of Judicial Branch employees;

(e) To adopt policy and rules for the operations of the Courts, including but not limited to, personnel, procurement, facilities and property, financial and travel (the provisions of § 6302(c), § 6303 and § 4105 of Title 4 of the Guam Code Annotated and § 23104(b) and § 23109 of Title 5 of the Guam Code Annotated are *reaffirmed*);

(f) To establish rules and regulations for appeals and grievances brought upon by classified employees of the Courts, who have exhausted administrative remedies. The Council is authorized to designate and delegate a hearing officer, to hear and decide personnel matters. The decision of the hearing officer shall be final and may be appealed to the Superior Court of Guam;

(g) To review and approve the budget for the operation of the Courts and its divisions, and submit its recommendations to *I Liheslaturan Guåhan*, under the signature of its Chairperson, by the first day of May of each year;

(h) To employ, retain or contract for the services of qualified specialists or experts, as individuals or as organizations, to advise and assist the Courts in the fulfillment of its duties;

(i) To adopt filing fees and other Court fees;

(j) To promulgate the Judicial Council’s own rules for its conduct and operation;

(k) To sue on behalf of the Courts, including on behalf of the Court’s employees, or itself to enforce any rights granted to the Courts;

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(l) To lease, evict, or sue on behalf of the Courts, relative to Court properties, equipment, and facilities;

(m) Nothing contained in this Section shall be construed directly or by implication to be in any way in derogation or limitation of the powers conferred upon the Judicial Council or existing in the Supreme Court and the Superior Court or the Judiciary by virtue of any provision of the Organic Act of Guam or any statutes of Guam;

(n) To have authority to act over all matters relating to the Judicial Building Fund; and

(o) To approve and/or appoint nominees to positions provided for by this Act; and

(p) To garnish income tax refunds of persons who have outstanding court fees, fines, and other court-ordered obligations, subject to the terms and conditions of a Memorandum of Understanding with the Department of Revenue and Taxation.

SOURCE: New Section. Repealed and reenacted by P.L. 24-139:34. Amended by P.L. 27-31:16 relative to the integration of the Supreme and Superior Court structure. Subsection (d) amended by P.L. 32-166:1 (June 24, 2014). Subsection (p) added by P.L. 32-181:XIII:19 (Sept. 5, 2014).

2014 NOTE: Judicial discipline in subsection (a) is now governed by the Guam Rules of Judicial Disciplinary Enforcement. *See* Chapter 5, 2014 Note.

COURT DECISIONS: The Supreme Court, in *Pangelinan v. Gutierrez*, 2000 Guam 11 (2000); affirmed by the Ninth Circuit as 276 F.3d 534 (1/10/2002), held P.L. 24-139 not to have existed at all as a public law because it was "pocket vetoed" by the Governor. Therefore, this section reverts to the way it read upon its original enactment as there were no amendments prior to or since P.L. 24-139. The main difference is that the Council assumes a far more advisory role than under P.L. 24-139, except for its power to take complaints about judges and justices.

1985 SOURCE: New Section.

1985 COMMENT: This section reflects the fact the Supreme Court will provide supervision and guidance to the entire court structure of Guam. The Commission [Council] will be advisory, except in its role of nominating persons to sit on the bench and in investigating misconduct of judges.

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Section 121 of the Code of Civil Procedure changed the Judicial Council from that existing before the Court Reorganization Act (P.L. 12-85). Prior to that date, all of the judges of the Island Court were members of the Council as was the judge of the District Court. The Judicial Council under P.L. 12-85 consisted of the Chief Justice of the Supreme Court, Presiding Judge of the Superior Court and three (3) non-judicial members. Public Law 14-132, in amending § 121 CCP, eliminated the reference to the Chief Justice of the Supreme Court.

COMMENT: The 1992 Act deleted reference to the Council's role in nominating judges as the Council's and the Bar's role under the 1992 Act are limited to recommending persons to the Governor, who does not need to consider them.

§ 5103. Selection of Justices or Judges.

Whenever a permanent vacancy shall occur in the office of the Chief Justice or of an Associate Justice of the Supreme Court, or whenever a vacancy shall occur in the office of the Presiding Judge or of a Judge of the Superior Court, the Governor, unless there has been a declaration made pursuant to § 4101(c) of this Title, shall fill such vacancy by appointing a person possessing the qualifications for such office. The Council and the Guam Bar Association may each submit to the Governor a list of qualified nominees for his or her consideration. In evaluating the nominees, the Governor, the Council, and the Guam Bar Association shall consider their character, reputation in the community, experience in the practice of law, and, to the extent that such matters are discernible, whether the nominees possess 'judicial temperament.

1985 SOURCE: CCP § 90 as modified.

COMMENT: The 1985 Bill proposed reinstating a true "Missouri Plan" where the Governor was bound to pick one person from among a list submitted by the Council. This plan was dropped from the 1992 Act and the Governor now selects judges unhindered by any legal requirements of pre-selection by the Council.

The reference to "judicial temperament" comes from American Bar Association suggestions for the selection of judicial candidates. However, some opinion states that one can never predict if a person has or does not have "judicial temperament" or even agree on just what it is. Therefore, the section does not attempt to make evaluation of this sometimes elusive quality mandatory.

§ 5104. Removal of Justices or Judges.

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A subcommittee of Judges and Justices shall be formed composed of three (3) members appointed by the Chairperson. The subcommittee shall have the following powers and duties with respect to the removal of Justices or Judges from the Courts of Guam:

(a) It shall initiate, receive and consider charges concerning alleged misconduct or incapacity of any Chief Justice, Justice, Presiding Judge or Judge of the Courts of Guam;

(b) It may subpoena witnesses, administer oaths and take testimony relating to matters before it; and

(c) It shall report its findings and make recommendations to the Judicial Council for action.

SOURCE: Subparagraph (d) added by P.L. 24-135:1. Subparagraph (d) amended by P.L. 24-139:26. Amended by P.L. 27-31:17 to reflect the integration of the Supreme and Superior Court structure.

2014 NOTE: Judicial discipline is now governed by the Guam Rules of Judicial Disciplinary Enforcement. *See* Chapter 5, 2014 Note.

1985 SOURCE: Former CCP § 123, modified.

1985 COMMENT: This section places with the Judicial Commission [Council] the power to investigate charges against justices and judges. This power, in basically the same form, formerly lay with the Judicial Council, but has never has been exercised.

§ 5105. Procedure for Considering Removal.

(a) Any charges against any Justice or Judge must be in writing, signed by the person making the charge under oath, except that any charge initiated by the subcommittee must be signed by at least two (2) members of the subcommittee. The subcommittee shall notify in writing every Justice or Judge against whom a charge is received and afford the Justice or Judge an opportunity to explain the charge. The subcommittee shall investigate all charges on a confidential basis, having available all the powers herein provided, and the proceedings shall not be public. If a majority of the members of the subcommittee determine that there is probable cause for belief that a Justice or Judge appears to be so incapacitated as substantially to prevent the Justice or Judge from performing judicial duties or has acted in a manner that constitutes willful misconduct in office, willful and persistent failure to perform

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judicial duties, habitual intemperance, or conduct so prejudicial to the administration of justice that brings the judicial office into disrepute, the subcommittee shall certify its findings to the Chief Justice of the Supreme Court, or to the most senior Associate Justice of the Supreme Court if the Chief Justice is the subject of the charges, within thirty (30) days after such determination.

(b) Any Council member or individual, including the individual making the charge, who divulges information concerning the charge prior to the certification of the charge by the subcommittee to the Chief Justice of the Supreme Court, or if the investigation discloses that the certification should not be issued by the subcommittee, any Council member or individual who divulges at any time any information concerning the original charge or divulges the contents or discloses any matter except as permitted by this Title, shall be guilty of a misdemeanor.

(c) In the event that the subcommittee determines that a Judge or Justice should be removed from office, the Attorney General shall present the case to the Supreme Court pursuant to the provisions of § 5107, *infra*.

1985 SOURCE: CCP § 124, modified.

2014 NOTE: Judicial discipline is now governed by the Guam Rules of Judicial Disciplinary Enforcement. *See* Chapter 5, 2014 Note.

1985 COMMENT: Basically follows prior law, but specifies that the Attorney General act as prosecutor. This function would be similar to the Attorney General's role before a Grand Jury, except that the Commission, working with him, makes the actual decision to bring or continue charges. The Attorney General could also prefer charges to the Commission. There would be no conflict, since it is he who determines what to bring before Grand Juries, and then prosecutes. This is a better method than that used by the Bar Ethics Committee, since the Attorney General has the personnel and mechanisms for investigations and prosecutions already in place.

COMMENT: The 1992 Act does not involve the Attorney General as prosecutor until after the Council has determined that the case must be taken to the Supreme Court.

§ 5106. Subcommittee Rules.

All the hearings and proceedings by the subcommittee shall be governed by this Title and by the rules and regulations adopted by the Subcommittee.

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2014 NOTE: Judicial discipline is now governed by the Guam Rules of Judicial Disciplinary Enforcement. *See* Chapter 5, 2014 Note.

1985 SOURCE: Former CCP § 95 modified.

§ 5107. Determination Of Judicial Disqualification.

(a) The Supreme Court of Guam shall constitute a special court to receive the recommendation of the subcommittee and conduct a hearing thereon.

(b) Following certification by the subcommittee, the special court may subpoena witnesses, administer oaths, and take testimony relating to the charge and may order the production for examination of any books or papers relative to the charge.

(c) The special court shall set a time and place for a hearing, giving notice to the complainant and the Justice or Judge involved. All parties shall have an opportunity to:

(1) Be heard;

(2) Subpoena witnesses and require the production of any books or papers relating to the proceedings;

(3) Be represented by counsel;

(4) Have the right of cross examination.

All witnesses shall testify under oath and the hearing shall be closed to the public unless the Justice or Judge complained against requests for an open hearing. The special court shall not be bound by the rules of evidence but its findings must be based upon competent and substantial evidence.

2014 NOTE: Judicial discipline is now governed by the Guam Rules of Judicial Disciplinary Enforcement. *See* Chapter 5, 2014 Note.

1985 SOURCE: Former CCP § 96.

§ 5108. Removal for Cause By Special Court.

If, after conducting its investigation thereof pursuant to § 5107 of this Chapter, two (2) of the three (3) members of the special court find that a Justice or Judge under charge should not remain in office, the special court shall remove such Justice or Judge within thirty (30) days after its findings have been so

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made. The Justice or Judge so removed shall nevertheless be subject to indictment, trial, judgment, and punishment according to the law. If the removal of the Justice or Judge is originated by a complaint signed by a Justice of the Supreme Court or Judge of the Superior Court, such member or members shall not be permitted to sit in or participate in the decisions of the special court.

2014 NOTE: Judicial discipline is now governed by the Guam Rules of Judicial Disciplinary Enforcement. *See* Chapter 5, 2014 Note.

1985 SOURCE: Former CCP § 97.

§ 5109. Appeal from Decision of Special Court.

Any Justice or Judge against whom a finding is made by the special court pursuant to § 5107 of this Chapter may appeal such decision in the same manner as a final decision of the Supreme Court in civil cases. Following the judgment of the special court and pending the outcome of the appeal, the Justice or Judge against whom the decision of the special court is given shall be suspended from his or her position without pay; provided, however, that if the adverse judgment is reversed on appeal the Justice or Judge shall be entitled to reinstatement and all back pay accrued during the time of the appeal.

2014 NOTE: Judicial discipline is now governed by the Guam Rules of Judicial Disciplinary Enforcement. *See* Chapter 5, 2014 Note.

1985 SOURCE: CCP § 98 added by PL. 11-95, repealed by P.L. 12-85 (Court Reorganization Act). Modified to provide procedure for suspension and reinstatement. Also, the "Special Court" is the Supreme Court, so that there is only one court empowered to hear the matter. A judge may petition for review to the 9th Circuit as in civil cases.

1985 COMMENT: This section is modified to reflect the suspension of the judge from duty during his appeal, but allowing for reinstatement and back-pay if the adverse decision is reversed.
