

**RULES FOR EXPEDITED PROCESS
FOR THE
SUPERIOR COURT OF GUAM**

**EFFECTIVE DATE: SEPTEMBER 1991
(AS AMENDED)**

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DEDICATION**

The Expedited Court Rules Committee would like to extend its appreciation to Lisa Benavente, Melinda M. Diego, Sylvia S. Ishmael and Janet Sardoma for their help in typing and creating the Judicial Council forms appended hereto.

**SUPERIOR COURT RULES FOR
EXPEDITED PROCESS**

PREAMBLE

Pursuant to 19 GCA Chapter 5A, as enacted by P.L. 20-170 [and renumbered by the Compiler], the Superior Court, in the exercise of its jurisdiction and authority, adopts and promulgates the following rules which shall govern procedures for the expedited judicial process of the Judicial Hearing Division of the Superior Court.

CHAPTER 1

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CHAPTER 2
LEGISLATIVE AUTHORITY & PURPOSE

A. Legislative Authority.

Public Law 20-170, An Act to Add a new Chapter 12 to Title 19, Guam Code Annotated, authorizes the creation of an Expedited Judicial Process Division which shall constitute a division of the Superior Court, to be designated as the *Judicial Hearings Division*. Under §18 of the Act an *ad hoc* committee appointed by the Presiding Judge of the Superior Court shall develop standard forms, rules and procedures for matters involving child support, child custody, paternity actions, mandatory wage assignments, and related matters.

B. Purpose.

These rules are enacted in order to expedite the process by which paternity is established, child support orders are modified, *et seq.*, pursuant to the applicable provisions of Title 45, CFR, §303.101, *et seq.*, That statute establishes certain safeguards, which are as follows:

1. Orders established must have the same force and effect under Territorial law as orders established by full judicial process within the Territory;
2. The due process rights of the parties involved must be protected;
3. The parties must be provided a copy of the order;
4. there must be written procedures for ensuring the qualification of presiding officers;
5. Recommendations of presiding officers may be ratified by a judge; and
6. Action taken may be reviewed under the Territory's generally applicable judicial procedures.

CHAPTER 3
DEFINITIONS

Rule 3.1. Expedited Process.

Expedited Process means administrative or expedited judicial processes or both which increase effectiveness and meet processing times specified in 43 CFR ¶ (b)(2) or its progeny, and under which the presiding officer is not a judge of the court.

Rule 3.2. Complex Cases.

If a case involves complex issues requiring judicial resolution, the Territory must establish a temporary support obligation under expedited processes and may then refer the unresolved issues to the full judicial system for resolution.

Rule 3.3. Governmental Assistance.

Governmental assistance includes welfare assistance, food stamps, medicaid and/or GHURA benefits.

Rule 3.4. Judicial Council Forms.

These are standardized forms for use by both the bar and the Referee as set forth in Appendix A hereto. These forms will be reviewed every 12 months, or as needed, by the Judicial Council or a committee appointed by the Council. The forms listed in Appendix A are approved for optional use beginning July 1, 1991. The use of these forms becomes mandatory on July 1, 1992. The contents of the forms is mandatory; the format is left to the user's discretion.

Rule 3.5. Referees.

A *referee*, who shall be appointed by the Presiding Judge, shall be responsible for conducting hearings and performing all related duties as prescribed by these Rules and 19 GCA Chapter 5A.

Rule 3.6. Time.

Computing any periods of time under these Rules shall be in accordance with Rule 6, Guam Rules of Civil Procedure.

Rule 3.7. Guidelines.

The Guam Child Support Guidelines adopted pursuant to 10 GCA §2817 {new publication of GCA -5 GCA §34117} and their attendant rules are hereby incorporated by reference.

CHAPTER 4
POWERS & DUTIES OF REFEREE

Rule 4.1. Qualifications of Referee:

- (a) A person who is appointed to serve as a referee shall be an attorney licensed to practice law in Guam.
- (b) A referee shall be an unclassified employee of the government of Guam and compensation shall be set by the Judicial Council.
- (c) Referees shall serve full-time and are prohibited from practicing law.
- (d) Referees shall comply with applicable provisions of the Organic Act, federal constitutional safeguards and statutory provisions, court rules and procedures and rules of the Judicial Council. Referees shall comply with the Code of Judicial Conduct to the same extent as full-time judges.
- (e) Referees shall complete judicial education programs as required by the Presiding Judge.

Rule 4.2. Functions and Duties of Referees.

Under authority of the Superior Court, a referee shall have the following duties in family law matters:

- (a) To take testimony and receive evidence for the record;
- (b) To hear and decide motions and preliminary matters, unless the same are appealed by any party including but not limited to the following matters:
 - (1) Order to Show Cause re Contempt;

(2) Order to Show Cause or Motion for child custody, child support, spousal support, visitation, injunctive relief, other relief, attorney's fees and costs and related matters;

(3) Motion, Order to Show Cause or Stipulation for Modification of an existing order of support.

(4) *Ex parte* applications;

(5) Motion for Joinder;

(6) Motion to Amend Pleadings;

(7) Pretrial settlement conferences;

(8) Motion to Withdraw;

(9) Motion or *ex parte* application for wage assignment;

(10) Motion to compel discovery or for protective orders;

(11) Mediation or dissolution matters where personal property in dispute is less than \$25,000.00.

(12) To enter default orders;

(13) To accept and approve voluntary acknowledgment of child support liability and stipulated agreements to pay support;

(14) To accept and approve voluntary acknowledgments of paternity;

(15) To enter temporary orders for support in complex cases;

(16) To conduct informal office conferences with the parties to discuss and resolve problems or questions about any matters relating to child support including support guidelines, payment schedules, paternity and support payment delinquencies; and,

(17) To prepare and submit recommendations and proposed orders to the Superior Court.

(18) To refer appropriate custody cases to mediation and/or home study referral.

(19) To discharge on behalf of the Superior Court, subject to the approval by the Presiding Judge, any other duties the Superior Court may have under 5 GCA Chapter 34 relating to child support enforcement.

(c) Subpoena Powers: The referee may issue *subpoenas* and *subpoenas duces tecum* at the request of any party in accordance with the provisions of 6 GCA §7201 *et seq.*

(d) Depositions: Depositions may be taken by any party upon notice as provide for Title 6, GCA (Evidence) and the Guam Rules of Civil Procedure.

(e) Oaths: The hearing officer and/or his agent shall have the power to administer oaths and affirmations and to certify official acts.

(f) Disqualification: A referee shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any referee by filing an affidavit prior to the taking of evidence at the hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

(g) Concurrent Jurisdiction: The Superior Court shall have concurrent jurisdiction to hea[r] all matters that may be heard by the referee.

(h) Continuances: The referee may grant continuances at any stage of the proceedings.

CHAPTER 5

PRELIMINARY OFFICE CONFERENCES

Rule 5.1. Call of the Calendar:

The calendar for each morning session shall be called promptly at 9:00 a.m. and the calendar for each afternoon session shall be called promptly at 1:30 p.m.

Rule 5.2. Hearings.

Hearings shall be held at 10:00 a.m. and 2:00 p.m., or as otherwise set by the referee. If there is no appearance when the calendar is first called, the matter may be ordered off calendar. Attorneys and the parties shall check in

with the clerk of bailiff in each department 15 minutes prior to the calendar calls at 9:00 a.m. and/or 1:30 p.m.

Rule 5.3. Duty to Meet and Confer.

Prior to the call of the calendar, the attorneys and parties shall meet and confer in good faith to review the issues pending before the Court and to inspect documents and exchange information in order that issues may be resolved or facts agreed to by stipulation and those issues remaining for determination by the Court may be clearly delineated and expeditiously presented to the Court at the time of hearing. Documents which have not been inspected by the opposite counsel or party before the commencement of the hearing will not be received into evidence except in extra-ordinary circumstances.

Rule 5.4. Mandatory Discovery.

The parties shall furnish to the referee true copies of their most recent income tax re-turns, their payroll stubs for the preceding six months and their income and expense statements in the form prescribed by the Judicial Council. In addition, the parties shall furnish the same discovery to adverse counsel at least 48 hours prior to hearing. Failure to do so will result in possible sanctions to be levied against the non-disclosing party including but not limited to (a) automatic striking of non-disclosing party's pleadings pursuant to Rule 37 of the Guam Rules of Civil Procedure and/or, (b) a fine of not less than \$100.00.

Rule 5.5. Office Conference on Disputed Matters.

Office conferences may be held after the call of the calendar on disputed matters. The referee may make a recommendation to the parties of an amount of support which the referee believes to be fair and proper under existing guidelines.

Rule 5.6. Stipulated Agreements.

If an agreement for support is reached at the conference, the referee shall prepare a written order in conformity with the agreement for signature by the parties and submission to the Court, together with the referee's recommendation. The Court may enter the order in accordance with the agreement without further hearing.

CHAPTER 6
HEARING PROCEDURES

Rule 6.1. Disputed Hearings.

At the conclusion of the office conference conducted pursuant to Rule 5, if the parties do not reach agreement, a hearing shall be conducted by the referee. There shall be a permanent record of the proceedings by tape recording.

Rule 6.2. Evidence.

At the hearing, the referee shall receive evidence and hear argument. Oral evidence shall be taken only on oath or affirmation. The parties are encouraged to introduce direct evidence by way of affidavit or declaration.

Rule 6.3. Hearing.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are not or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

Rule 6.4. Evidence: Cross-examination, Foundation Testimony.

(a) At any time five or more days prior to a hearing or a continued hearing, any party may deliver or by facsimile transmit to the opposing party a copy of any affidavit or declaration which he proposes to introduce in evidence, together with a notice as provided in Rule 6.4(b). Unless the opposing party within two days after such delivery, delivers in turn to the proponent a request to cross-examine such affiant or declarant, his right to cross-examine such affiant or declarant is waived and the affidavit or

declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant had testified orally. If an opportunity [to] cross-examine the affiant or declarant is not afforded after request therefor is made as herein provided, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subsection (a) shall be substantially in the following form:

The accompanying affidavit of (insert here name of affiant) will be introduced as evidence at the hearing in (insert here title of proceedings.) (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question or to cross-examine him unless you notify the proponent or his attorney that you wish to cross-examine him. To be effective, your request must be delivered to the proponent or his attorney before (here insert a date two days after the date of delivery of the affidavit to the opposing party.)

Rule 6.5. Judicial Notice.

In reaching a decision, judicial notice may be taken of any fact which may be judicially noticed by the courts of Guam. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity to request to refute the judicially noticed matters by evidence or by written or oral presentation of authority.

Rule 6.6. Report and Recommendation of Referee.

At the conclusion of the hearing, the referee or the prevailing party shall prepare and file with the court a report containing a recommendation for entry of an order of support. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order stating:

- (1) The amount of support;
- (2) by and for whom it shall be paid;
- (3) the effective date of the order;
- (4) findings of fact, including but not limited to the respective incomes of the parties;

- (5) conclusions of law.
- (6) If child support is awarded below the indicated guideline amount, a specific finding as to the reasons for award;
- (7) A copy of the report shall be furnished to all parties at the time of hearing.

Rule 6.7. Legal Effect of Recommendation.

The referee shall, after hearing any motion or other application for relief, recommend entry of an order and shall make a written recommendation as to each matter heard. The referee's recommendation has the effect of an order of the Court unless it is modified by the Court. The Court must reject the referee's recommendation within ten days of hearing or it shall be deemed adopted by the Court without signature.

Rule 6.8. Findings of Fact, Conclusions of Law.

The referee shall make recommended findings of fact and conclusions of law which may be adopted by the Court in its orders.

Rule 6.9. Failure to Approve Order as to Form and Content.

If for some reason the Judicial Council form orders cannot be utilized at the time of hearing, when the prevailing party shall prepare the proposed order [and send it] to the responding party forthwith for approval as to form and content. If the responding party fails to approve or object to the order within ten days of its receipt, the prevailing party may then deliver or mail the order to the judge for signature, accompanied by a letter, with a copy to the responding party, stating that the order was mailed to the responding party on a certain date, the circumstances surrounding the failure to sign, and requesting that the judge sign the order without the responding party's signature. If the prevailing party fails to prepare and mail the order within ten days of the date of hearing, the responding party may do so and mail the order directly to the judge for signature without approval of opposing counsel.

Rule 6.10. Cross-Motions.

Cross-motions need not be filed in opposition in order to grant relief as to child support or visitation to the opposing party. In other words, should plaintiff petition to increase support, defendant need not file a cross-motion to decrease support. Once an issue is brought before the referee, the referee may increase or decrease the support or [order] any other suitable relief as

necessary, as to child support issues and/or visitation, regardless of whether or not cross-motions are filed, and he may do so *sua sponte*, without the filing of any motions whatsoever. All other issues must be raised by cross-motion.

It is the intention of these rules that when a request is made to modify child support, a counter-request to change custody should not lie during the proceedings for purposes of negotiation. Therefore, any time a hearing is set on the question of modification of child support to be heard within a 30-day period, no request to modify custody may be made or raised during that period. This section does not apply to on-going divorce actions in which an interlocutory decree has not issued, nor does it apply to cases where child support or custody has not already been set. If the welfare of the children is in danger, during any period when a request to modify custody will not lie, the complaining parent shall immediately notify Child Protective Services or the Guam Police Department, or both, of the danger to the children and the Government of Guam may take any actions which are necessary to protect the welfare of the children, even though one of the parties may not then make a request for change of custody.

Rule 6.11. Points and Authorities.

Case authority in any party's Points and Authorities need not be filed in any Motion for Modification re Child Support, Visitation Order, [or] Order to Show Cause re Contempt.

Rule 6.12. Duty to Advise of Receipt of Governmental Assistance.

The referee shall inquire of any case before him as to whether or not the minor children of the parties has received, is receiving, or intends to receive any governmental assistance. The parties shall provide their names, addresses, dates of birth and social security numbers as well as the social security numbers of their dependents, if known, as well in order to verify the parties representations. If the parties or their dependents are in receipt of governmental assistance, the referee shall, *sua sponte*, orally join the Department of Public Health and Social Services as party-plaintiff or party-defendant in any proceeding, and shall notify the Department of such joinder proceeding, and shall notify the Department of such joinder and the domestic case action number. It shall also be the duty of the private bar to enquire of their clients as to whether or not they have been in receipt, are receiving, or intend to receive governmental benefits and advise the Department of Law. {Failure to so advise the Department of Law shall be

grounds to set aside any judgment as to child support as the Department may be considered as indispensable party to the proceeding under Rule 13 of the Guam Rules of Civil Procedure.)

CHAPTER 7
APPELLATE PROCEDURES

Rule 7.1. Written Objections.

(1) Any party objecting to the recommended order shall file a written objection to the recommendations in the form prescribed by the Judicial Council and serve copies of the objections on the referee's office and opposing counsel.

(2) Objections shall be filed within 10 days of the date the recommendation was made in open court or if taken under advisement, 10 days after the date of the subsequent written recommendation made by the referee.

(3) Objections shall be to specific recommendations and shall set forth reasons for the objections.

(4) The referee shall then refer the matter to a Superior Court Judge for review of matters specifically objected to by the parties or certified by the referee.

(5) If no objection or request for review is made within 10 days, the party is considered to have consented to entry of an order in conformance with the referee's recommendation.

(6) After hearing in the Superior Court, the Court may award attorney's fees and costs if the appealing party does not prevail and the recommendations of the referee have not been substantially modified by the Court.

CHAPTER 8
CONTEMPT PROCEDURES

Rule 7.1. Delegation of Powers.

The Presiding Judge specifically delegates his duty to hear contempt proceedings to the referee. The referee may find an obligor in contempt if the referee finds that the obligor is in arrears and if the referee finds that the obligor has knowledge of the order and the ability to pay the amount due under the support order. Upon finding an obligor in contempt of court under this section, the referee may immediately recommend sanctioning the obligor as follows:

- (1) Commit the obligor to the jail for a period not to exceed two days per count of contempt; and/or
- (2) Commit the obligor to jail with the privilege of leaving jail, during such hours as the court determines and under such supervision as the Court considers necessary, for the purpose of allowing the obligor to go and return from his place of employment; and/or
- (3) Have obligor post a bond of at least \$500.00 to secure future child support payments under 10 GCA §2824 [5 GCA §34124]. If obligor is more than 60 days late in any one payment, a motion be made for an order forfeiting said bond to the obligee.
- (4) The referee may refer any matter to the Superior Court for contempt proceedings, if he so warrants.

CHAPTER 9
SEVERABILITY

If any part or section of these regulations is declared to be invalid by a court of law or administrative tribunal for any reason, the remainder of these regulations shall not be affected thereby and shall remain valid and enforceable.

CHAPTER 10
REPEALER & CONFLICT CLAUSES

Rule 10.1. Repealer Clause.

These Rules are not intended to be a repeal of the previous rules promulgated by the Court. However, to the extent that a conflict might exist, these Rules shall control and the previous inconsistent rules shall be repealed only to the extent of the conflict.

Rule 10.2. Conflict of Laws.

Should these Rules conflict with the Federal Regulations or Guam statutes now in effect or to be later promulgated, the Federal Regulations or Guam statutes shall take precedence.

FORMS

NOTE: Official Forms have been adopted along with these Rules. They may be viewed and copied either at the Superior Court or at the Family Division of the Attorney General's Office, 7th Floor, PDN Building in Agana.
