

GUAM RULES AND REGULATIONS

TITLE 19

LAW

(UPDATED THROUGH OCTOBER 29, 2020)

TITLE 19
LAW

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CHAPTER 1
OFFICE OF ATTORNEY GENERAL
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ARTICLE 1
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NOTE: Rule-making authority cited for the formulation of regulations for the conduct of the Department of Law by the Attorney General, 5 GCA §30114, as reenacted by Public Law 13-117.

Public Law 13-117 (enacted December 27, 1975) repealed and reenacted Title VIII of the Government Code, consisting of §§7000-7013.

Title 5 GCA Chapter 30 has been extensively amended with the advent of the elected Attorney General (through provisions of an amended Organic Act in 1998), but these regulations remain intact.

§ 1101. Definitions.

As used in this part:

(a) The term *Attorney General* means the Attorney General of the territory of Guam or his delegate.

(b) The term *related crime* means any crime similar in nature to that which gives rise to the seizure of property for forfeiture, for example, where property is seized for a violation of the Guam laws relating to narcotics, a "related crime" would be any previous

offense involving a violation of the Federal laws relating to narcotics or the laws of any State or political subdivision thereof relating to narcotics.

(c) The terms *net equity*, *net lien* and *net interest* mean the actual interest a petitioner has in property seized for forfeiture at the time a petition for remission or mitigation of forfeiture is granted by the Attorney General; provided, however, that in determining actual interest the Attorney General shall make no allowances for unearned interest, finance charges, dealer's reserve, attorney's fees or other similar charges.

(d) The term *owner* means the person who holds primary and direct title to the property seized for forfeiture.

(e) The term *person* means an individual, partnership, corporation, joint business enterprise or other entity capable of owning property.

(f) The term *petition* means the petition for remission or mitigation of forfeiture.

(g) The term *petitioner* means the person applying for remission or mitigation of the forfeiture of seized property.

(h) The term *property* means property of any kind capable of being owned or possessed.

(i) The term *record* means an arrest followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of such conviction, all of which occurred more than ten (10) years prior to the date the petitioner acquired its interest in the seized property, shall not be considered a record: Provided, however, that two (2) convictions shall always be considered a record regardless of when the convictions occurred: And provided further, that the Attorney General may, in his discretion, consider as constituting a record, an arrest or series of arrests to which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(j) The term *reputation* means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(k) The term *violator* means the person whose use of the property in violation of the law subjected such property to seizure for forfeiture.

§ 1102. Procedure Relating to Judicial Forfeitures.

(a) A petition for remission or mitigation of forfeiture shall be addressed to the Attorney General, and shall be sworn to by the petitioner, or by his counsel upon information and belief, and shall be submitted in triplicate to the Attorney General for the territory of Guam.

(b) Upon receipt of such a petition for mitigation or remission, the Attorney General shall refer one copy of the petition to the administrator of the appropriate investigating agency, and a second copy to the Assistant Attorney General handling the forfeiture procedure. Each of these persons shall submit a report to the Attorney General, setting forth their recommendations with regard to the petition.

(c) Upon receipt of the recommendations of those persons receiving copies of the petition, but in any event within thirty (30) days of receipt of the petition, the Attorney General shall rule on the petition. Failure of the Attorney General to act within thirty (30) days shall constitute a denial of the petition. No hearing shall be held.

(d) Notice of the granting or denial of the petition shall be mailed to the petitioner or to his attorney. If the petition is granted in whole or in part, the conditions of relief and the procedures to be followed in order to obtain that relief shall be set forth.

(e) A request for reconsideration of a denial may be submitted to the Attorney General within ten (10) days of the denial. Such request must be based on evidence found or developed since the original petition was filed, and not considered in the denial. Only one request for reconsideration of a petition shall be considered.

§ 1103. Contents of Petition for Mitigation or Remission.

(a) Petitions shall be sworn, and shall include the following information in clear and concise terms:

(1) A complete description of the property, including license numbers and serial numbers, and the date and place of seizure.

(2) The interest of the petitioner in the property, as owner, mortgagee or otherwise, to be supported by bills of sale, contracts, mortgages or other satisfactory documentary evidence.

(3) The facts and circumstances, together with proof thereof, relied upon by the petitioner to justify remission or mitigation.

(b) The Attorney General shall not consider whether the evidence is sufficient to support the forfeiture, since the filing of a petition presumes a valid forfeiture. The Attorney General shall consider only whether the petitioner has satisfactorily established his good faith and his innocence and lack of knowledge of the violation which subjected the property to seizure and forfeiture, and whether there has been compliance with the standards hereinafter set forth.

(c) The Attorney General shall not remit or mitigate a forfeiture unless the petitioner:

(1) establishes a valid, good faith interest in the seized property as owner or otherwise; and

(2) establishes that he at no time had any knowledge or reason to believe that the property in which he claims an interest was being or would be used in a violation of the law; and

(3) establishes that he at no time had any knowledge or reason to believe that the person using the property in a violation of the law had any record or reputation for violating laws of the United States or of the territory of Guam or of any state for related crime.

§ 1104. Mitigation and Remission.

(a) Mitigation: In addition to his discretionary authority to grant relief by way of complete remission of forfeiture, the Attorney General may, in the exercise of his discretion, mitigate forfeitures of seized property. This authority may be exercised in

those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Attorney General, complete relief is not warranted. Mitigation may take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) Rival Claimants: If the beneficial owner of property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, relief from a forfeiture shall be granted to the beneficial owner and the petition of the owner of the security interest shall be denied.

(c) Leasing Agreements:

(1) A person engaging in the business of renting property shall not be excused from establishing compliance with the requirements of § 1103.

(2) A lessor who leases property on a long term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless his lessee would be entitled to such relief.

(d) Voluntary Bailments: A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall be granted remission or mitigation of forfeiture upon meeting the requirements of § 1103.

(e) Straw Purchase Transactions: If a person purchases in his own name property for another who has a record or reputation for related crimes, and if a lienholder knows or has reason to believe that the purchase of record is not the real purchaser, a petition filed by such a lienholder shall be denied unless the petitioner establishes compliance with the requirements of § 1103 as to both the purchaser of record and the real purchaser. This Rule shall also

apply where money is borrowed on the security of property held in the name of the purchaser of record for the real purchaser.

(f) Notwithstanding the fact that a petitioner has satisfactorily established compliance with the administrative conditions applicable to his particular situation, the Attorney General may deny relief if there are unusual circumstances present which in his judgment provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be inimical to the interests of justice.

§ 1105. Terms and Conditions of Remission.

(a) The terms and conditions of remission or mitigation of forfeitures in cases subject to judicial forfeiture proceedings shall, at a minimum, require that a petitioner pay the costs and expenses incident to the seizure of the property including any court costs and accrued storage charges. However, if the petitioner's interest in the property is derived from a lien thereon, the petitioner shall pay an amount equal to all costs and expenses incident to the seizure including any court costs and accrued storage charges or the amount by which the appraised value of the property exceeds the petitioner's net interest therein, whichever is greater. The appraised value at the time of seizure is used for the purposes of these Rules.

(b) Where a complaint for forfeiture has been filed with the District Court, a lienholder shall also be required to furnish the Attorney General with:

- (1) An instrument executed by the registered owner and any other known claimant of an interest in the property, if they are not in default, releasing their interest in such property; or
- (2) If the registered owner or any other known claimant is in default, an agreement to save the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(c) Alternatively, a lienholder may elect to permit the litigation to proceed to judgment. In that event, the court shall be advised that the Attorney General has allowed the petition for remission of the forfeiture and shall be requested to order the property sold

by the Government at public sale and the proceeds thereof to be distributed as follows:

(1) Payment to the petitioner of an amount equal to his net equity if the proceeds are sufficient or the net proceeds otherwise, after deducting from the petitioner's interest an amount equal to the Government's costs and expenses incident to the seizure, forfeiture and sale, including court costs and storage charges, if any;

(2) Payment of such costs and expenses;

(3) Payment of the balance remaining, if any, to the Government.

(d) The Attorney General may impose such other conditions as may be appropriate.

(e) Upon compliance with the terms and conditions of remission or mitigation in cases subject to judicial forfeiture proceedings, the Attorney General shall take appropriate action to effect the release to the petitioner of the property involved and to dismiss the complaint if one has been filed or otherwise dispose of the matter by forfeiture, sale and distribution of the proceeds therefrom as set forth herein.

(f) In any case, if the owner of record or any other claimant wishes to contest the forfeiture, judicial condemnation of the property shall be consummated, the court shall be apprised of the granting and terms of the remission or mitigation by the Attorney General, and the court shall be requested to frame its decree of forfeiture accordingly.

(g) Where the owner of property elects not to comply with the conditions imposed upon the release of such property to said owner by way of relief, the custodian of such property may be authorized to sell it. From the proceeds of the sale the custodian shall deduct and retain for the account of the Government all costs incident to the seizure and forfeiture plus the costs of sale, and shall pay said owner the balance, if any.

(h) Where remission or mitigation is allowed to a person holding a security interest who is thereby eligible to have the property released to such person upon compliance with the terms

and conditions of remission or mitigation, the property may nevertheless be retained by the Government for official use by an appropriately designated department or agency thereof upon payment by it to such person of an amount equal to such person's net equity, less an amount equal to the Government's costs and expenses incident to the seizure and forfeiture including court costs and storage charges, if any, and upon payment by it to the Government of an amount equal to such costs and expenses.

NOTE: Executive Order 78-38; approved by the Governor on November 21, 1978; filed with the Legislative Secretary on December 11, 1978.

ARTICLE 2
CHILD SUPPORT GUIDELINES

SOURCE: Approved by P.L. 30-016:2 (April 17, 2009).

NOTE: Rule-making authority originally cited for formulation of regulations for the Child Support Guidelines by the Department of Public Health and Social Services 10 GCA §2817(A).

The regulations of the Child Support Guidelines forms are reprinted herein as exact as possible to those filed with the Legislative Secretary.

(2004) Federal and local law have been amended extensively since these regulations were adopted. To see the current guidelines, contact the Office of the Attorney General, Child Support Enforcement Division at <http://www.guamattorneygeneral.com>.

- § 1201. Explanation
- § 1202. Introduction
- § 1203. How to Use the Guidelines in Sole Custody Situations
- § 1204. How to Use the Guidelines in Shared Custody Situations
- § 1205. Gifts in Lieu of Money
- § 1206. Medical Insurance
- § 1207. Review and Adjustment (Modification)
- § 1208. Judge's Findings
- § 1209. Adoption of Guidelines, Effect on Modifications
- § 1210. Effective Date.

§ 1201. Explanation.

(a) The law provides that the Attorney General shall adopt, pursuant to the Administrative Adjudication Law, Child Support

Guidelines, a schedule of normal child support payments to be paid by a non-custodial parent to a custodial parent. [5 GCA §34118]

(b) The law has also created an expedited judicial process agency within the Superior Court of Guam designated as the Judicial Hearings Division. This administrative agency has concurrent jurisdiction with the Superior Court over child support matters. Therefore, all references in the guidelines to court hearings include administrative hearings, all references to court orders include administrative orders, and all references to judges include administrative hearings officers. [19 GCA §5501, et seq]

(c) While Guam's Child Support Guidelines are based on an Income Share Model developed by the Child Support Guidelines project of the National Center for State Courts, and the model is predicated on the concept that the child should receive the same proportion of parental income that he or she would have received had the parents lived together, we acknowledge the need for a schedule indicating the fair and reasonable amount of child support to be paid based on the income of the parties.

(d) The Child Support Enforcement Division has, with the help of Policy Studies Inc., Denver Colorado, worked on developing a Schedule, as required by 5 GCA §34118, to show the fair and reasonable amount of child support to be paid based on the income of the parties.

(1) Exhibit A, attached hereto, is the Updated Schedule of Basic Child Support Obligations. This is intended to serve as a base, and not as a ceiling or cap. These figures are intended to operate as a rebuttable presumption in computing child support under the Child Support Guidelines.

2016 NOTE: Subsection designations added pursuant to authority granted by 1 GCA § 1606.

§ 1202. Introduction.

(a) Purposes.

(1) To establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay;

(2) To make child support awards consistent for persons in similar circumstances

(3) To give parents and courts guidance in establishing child support orders and to promote settlements;

(4) To comply with federal law (42 U.S.C. Section 651 et. seq., 45 C.F.R. Section 302.56);

(5) To comply with local law (5 GCA §34118).

(b) Premises.

(1) These guidelines apply to all children, whether born in or out of wedlock.

(2) The child support award should permit the children the standard of living which as closely as possible approximates the one they would have had if the family remained together, recognizing the cost of maintaining two households.

(3) The child support obligation has priority over all other financial obligations.

(4) The fact that a custodial parent receives child support does not mean that he or she may not also be entitled to spousal maintenance.

(5) The obligation to support other children may be taken into account by the court, but shall not necessarily entitle the paying parent to a reduction of support, proportionate or otherwise. See 19 GAR §1203(b)(3).

(c) Presumption.

(1) Guidelines: In any action to establish or modify child support, whether temporary or permanent, the child support guidelines shall be used in the establishment or modification of the amount of child support.

Courts may deviate from the guidelines where its application would be inequitable. In such cases, the court shall enter appropriate written or specific findings on the record.

(2) Needs: The guidelines presume that the cost to

provide for the average needs of children are as listed in the attached Schedule. Should a custodial parent request child support in excess of the presumed average needs for the child, direct evidence must be presented at the time of hearing to prove that the actual needs of the child are in excess of the presumed average needs of the child in order to overcome the presumption. (For example, where the parents' combined adjusted monthly gross income is \$4,000, the cost to provide for the average needs of one child according to the table is \$746 per month. Should the custodial parent seek a child support award of more than \$ 746 per month, he/she must provide evidence of the child's actual needs in excess of \$746 per month.)

§1203. How to Use the Guidelines in Sole Physical Custody Situations.

(a) The gross income of the parties shall be determined, as follows:

(1) Gross income includes income from any source, and may include, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, gifts, prizes, worker's compensation benefits, spousal maintenance received, disability benefits, rental income, retirement plans, pensions and basic and variable allowances for housing and subsistence from military pay and benefits including but not limited to basic allowance for housing (BAH), basic allowance for subsistence (BAS), basic allowance for quarters (BAQ), specialty & proficiency pay, war-zone allowance, hazardous duty, and any other entitlements reflected in the monthly leave and earnings statement (LES), such as the cost-of-living allowance (COLA) for those in high cost areas and other allowances. If the servicemember does not receive BAH or BAQ because he/she lives on base, then the value of that free housing is imputed to his/her income using the military pay charts available on the Defense Finance and Accounting Service (DFAS) website.

(2) Gross income does not include benefits received

from means-tested public assistance programs including, but not limited to, temporary assistance to needy families (TANF), supplemental security income (SSI), food stamps, general assistance, or sums received as child support.

(3) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts, minus ordinary and necessary expenses required to produce income. "Ordinary and necessary expenses" does not include amounts determined by the court to be inappropriate for determining gross income for purposes of child support.

(4) Expense reimbursements or benefits received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses, regardless if they are taxable as income.

(5) If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, such as caring for children, the court may attribute income to the parent up to his or her earning capacity.

(6) The court may take into account the benefits a noncustodial parent derives from remarriage, expense-sharing, or other source towards allocation of self support or other applicable costs.

(b) The gross income shall be adjusted as follows:

(1) Each parent shall be entitled to deduct \$775 from gross income for "self-support". The basic gross income need is based on the U.S. Department of Health and Human Services Poverty Guidelines (2004) for the 48 contiguous states and District of Columbia.

(2) Spousal maintenance and court-ordered child support of other children, actually paid, shall be deducted from the gross income of the payor. "Other children" means

children who are not the subject of this particular child support determination. (As stated in §1202(b)(5), support of other children, and children to whom the noncustodial parent owes a legal obligation of support may be considered.)

(3) The court has discretion to credit to the appropriate parent, a maximum of \$50 per child for other natural children in the parent's home. However, this credit shall not be routinely given.

(4) The cost of medical insurance coverage for the children shall be deducted from the gross income of a parent paying the insurance premium. This amount shall be calculated on a per capita basis. Reimbursement for health insurance premiums may be awarded to the appropriate parent in place of a gross income deduction.

(c) The adjusted gross income of the parents shall be determined as follows:

Adjusted Gross Income is gross income minus the allowed adjustments. Once the Adjusted Gross Income for each parent is established, these amounts shall be added together and the result is the Combined Adjusted Gross Income.

(d) The basic child support obligation shall be determined as follows:

The Combined Adjusted Gross Income figure shall be located on the Schedule of Basic Child Support Obligation, matching it to the column for the number of children involved and multiplying it by the corresponding percentage from the Schedule. The answer is the Basic Child Support Obligation. If the primary obligation of the non-custodial parent is less than \$50 per child per month, a minimum child support award of \$50 per child per month shall be ordered.

(e) The total child support obligation shall be determined as follows:

To the basic obligation, any of the following may be added by the court:

(1) Child Care Costs: Child care expenses appropriate to the parent's financial abilities and to the lifestyle of the

children had the family remained intact;

(2) Education Expenses: Any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child when such expenses are incurred by agreement of both parents or ordered by the court;

(3) Older Child Adjustment: The average expenditures for children over age twelve (12) exceed the average expenditures for all children by approximately ten percent (10%). Therefore, the court may increase child support for an older child by an amount up to ten percent (10%) of the support shown on the Schedule.

The net figure derived from adding any of these allowable sums to the Basic Child Support Obligation is the total Child Support Obligation.

(f) Each parent's proportionate share of the Total Child Support Obligation shall be determined as follows:

The Total Child Support Obligation shall be divided between the parents in proportion to their Adjusted Gross Incomes. The obligation of each parent is computed by multiplying each parent's percentage of his/her Combined Adjusted Gross Income by the Total Child Support Obligation. The custodial parent shall be presumed to spend his or her share on the children.

(g) The child support award shall be determined as follows:

The court shall order the non-custodial parent to pay child support in an amount equal to his or her proportionate share of the Total Child Support Obligation.

(h) EXAMPLE: One child, age 15: Combined Adjusted Gross Income is \$1,000. The father's Adjusted Gross Income is \$600. Divide the father's Adjusted Gross Income by the Combined Adjusted Income. The result is the father's share of the Combined Adjusted Gross Income.

(1) Thus: \$600 divided by \$1,000 = 60%. The father's share would be 60%. The mother's share would be 40%. On the Schedule, the Basic Child Support Obligation for

Combined Adjusted Gross Income of \$1,000 for One Child is \$230. To this the judge adds \$23 because the child is over twelve (12) years old (approximately 10% in this example). The total Child Support Obligation is \$253.

(A) The father's share is 60% of \$253, or \$151.80. The mother's share is 40% of \$253, or \$101.20. Custody is awarded to the mother.

(B) The Child Support Award is that the father pay the mother \$151.80 per month.

(C) The value of the mother's contribution is \$101.20, and she is presumed to spend it directly on the child.

(i) If the non-custodial parent's income is unknown, a temporary child support award shall be set at \$150 per month per child and the Worksheet for Child Support Amount need not be filled out. When both parent's incomes are known the temporary child support amount will be adjusted accordingly using the procedures described in the Child Support Guidelines.

(j) Visitation. The court may consider the costs of visitation and may allocate such costs between the parents in proportion to their ability to pay.

(k) Abatement. When the non-custodial parent is directly providing for the children's needs for an extended period of time, such as on a long visit, the court may order a reduction of child support paid to the custodial parent.

2016 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§ 1204. How to Use the Guidelines in Shared Physical Custody Situations.

(a) A parent has shared physical custody (or shared custody) of children for purposes of this guidelines if the children reside with that parent for a period specified in writing in the custody order of at least 40 percent, but no more than 60 percent, of the year, regardless of the status of legal custody.

(b) The child support order must state that failure to exercise

sufficient physical custody to qualify for shared physical custody under this rule is grounds for modification of the child support order. Denial of visitation by the custodial parent is not cause to increase child support.

(c) Because shared physical custody presumes that certain basic expenses for the children will be duplicated, an adjustment for shared physical custody is made by multiplying the basic child support obligation by one and fifty hundredths (1.50) or one hundred fifty percent (150%).

(d) Section 1203 (a) through (d) shall apply in shared physical custody situations.

(e) The basic child support obligation shall be determined as follows:

(1) Each parent's Adjusted Gross Income is divided by the Combined Adjusted Gross Income to get the percentage share of income of each parent.

(2) The Combined Adjusted Monthly Gross Income figure shall be located on the Schedule of Basic Child Support Obligation, matching it to the column for the number of children involved. Take the amount of the Basic Child Support Obligation and multiply it by 1.5 to determine the Shared Physical Care Support Obligation.

(3) Multiply the Shared Physical Care Support Obligation by the percentage share of income of each parent. This is each parent's portion of Shared Physical Care Support Obligation.

(4) Determine the number of overnights with each parent (this answer must total 365). Take the number of overnights with each parent and divide by 365 to determine the percentage of time with each parent. If the overnights with either parent is less than 146, use Worksheet A for sole custody situations.

(5) Take each parent's portion of Shared Physical Care Support Obligation and multiply it by the percentage of time of the other parent to get the Support Obligation for Time with Other Parent.

(f) The total child support obligation shall be determined as follows:

(1) To the Support Obligation for Time with Other Parent, any of the following necessary expenses may be added by the court: child care costs, extra education expenses, and older child adjustment (see Section 1203(e)(1) through (3)).

(2) Add the Total Necessary Expenses for Each Parent. Then add both parents' Total Necessary Expenses to get the Combined Necessary Expenses. Each parent's share of Necessary Expenses is determined by multiplying the Combined Necessary Expenses by each parent's Percentage Share of Income.

(3) To determine whether expenses paid by either parent is in excess of their fair share, subtract Each Parent's Share of Necessary Expenses from the Total Necessary Expenses for that parent. If the number is negative, enter zero. To determine Each Parent's Adjusted Support Obligation, subtract the Expenses Paid in Excess of Fair Share from the Support Obligation for Time With Other Parent.

(4) The Recommended Child Support Order is determined by subtracting the lesser amount from the greater amount of Each Parent's Adjusted Support Obligation and enter result under greater amount.

2016 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§1205. Gifts in lieu of money.

The child support award is to be paid in money. Gifts of clothing, supplies, etc. in lieu of money are not to be offset against the support award, except by court order.

§1206. Medical Insurance.

An order for child support shall assign responsibility for providing medical insurance for the children who are the subject of the support award. The court shall specify the percentage of uninsured medical expenses for the children which each parent shall pay. The apportionment shall reflect the parent's respective

ability to pay.

§1207. Review and Adjustment (Modification).

Review and adjustment may be initiated by the Office of the Attorney General, Child Support Enforcement Division when:

(a) there is no provision for health insurance in the order;

(b) in TANF cases, thirty-six (36) months after establishment of the order, or most recent review; or

(c) in Non-TANF cases, thirty-six (36) months after establishment of the order, or most recent review, or when requested by either parent.

2016 NOTE: Subsection designations altered pursuant to authority granted by 1 GCA § 1606.

§1208. Judge's findings.

The court shall make findings in the record as to: adjusted monthly gross income, basic child support obligation, total child support obligation, each parent's proportionate share of the total child support obligation, the child support award and medical support.

§1209. Adoption of Guidelines, Effect on Modifications.

The adoption of these guidelines cannot, by itself, be the sole basis for a request for a modification of an existing child support order.

§1210. Effective date.

Effective _____, all child support awards shall be made pursuant to these guidelines, whether they be original awards or modifications of pre-existing awards.

ARTICLE 3

RULES FOR REMOTE ONLINE NOTARIZATION

SOURCE: Adopted by P.L. 35-100:4 (Oct. 29,2020).

§ 3101. Online Notarization.

- § 3102. Application for Online Notary Public Commission; Renewal.
- § 3103. Performance of Notarial Acts.
- § 3104. Electronic Signature and Seal.
- § 3105. Standards for Online Notarization.
- § 3106. Fees.
- § 3107. Changes After Commissioning.
- § 3108. Termination of Commission.

§ 3101. Online Notarization.

(a) A notary public who has been properly commissioned to conduct online notarizations may complete authorized notarial acts by means of an electronic interactive two-way audio and video communication that meets the following requirements. An online notarization may not be performed by an individual who has not been commissioned as an online notary public by the Office of the Attorney General of Guam.

(b) The terms used herein shall have the same definitions prescribed in § 33801 of Article 10, Chapter 33, Title 5, Guam Code Annotated. These Rules pertain to online notarizations as defined and used throughout Article 10 of Chapter 33, Title 5, Guam Code Annotated.

§ 3102. Application for Online Notary Public Commission; Renewal.

(a) A person who has been previously commissioned as a notary public by the Attorney General of Guam, or meets the qualification requirements for commissioning as a notary public as outlined in Chapter 33 of Title 5, Guam Code Annotated, may submit an application for commissioning as an online notary public by submitting to the Office of the Attorney General of Guam the prescribed application form including the following information:

- (1) the applicant's legal name;
- (2) the applicant's physical address in Guam, which includes the street address, village, and zip code. The applicant may provide a post office box number for purposes of receiving mail from the Attorney General, but must also

provide a physical address;

(3) a valid email address of the applicant;

(4) a valid telephone number of the applicant;

(5) the date the applicant was commissioned as a notary public;

(6) the date the applicant's commission is set to expire;

(7) the name of the vendor and electronic technology, or technologies, to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document;

(8) the name of the vendor and electronic technology, or technologies, to be used in conducting identity proofing and credential analysis;

(9) a copy of the applicant's electronic notarial certificate (otherwise known as a digital certificate) or other technology for rendering a notarized electronic document tamper evident;

(10) a copy of the applicant's electronic seal in a file format acceptable to the Office of the Attorney General of Guam;

(11) a copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated;

(12) a copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public to conduct identity proofing and credential analysis;

(13) an explanation of the methods and/or technology by which the online notary public will maintain and store the secure electronic records of all electronic documents notarized by the online notary public in accordance with § 3103(h) of these Rules;

(14) a certification confirming that the applicant will comply with the following standards prescribed by the

Attorney General of Guam; and

(15) an application fee of One Hundred Dollars (\$100.00). All fees shall be deposited in the Notary Public Revolving Fund and used according to § 33106 of Article 1, Chapter 33, Title 5, Guam Code Annotated.

(b) The Attorney General shall issue an online notary public commission to a qualified applicant who meets the eligibility requirements stated in these Rules, has submitted a properly completed and executed application, and has submitted the required application fee.

(c) An online notary public may renew his or her online notary public commission by filing an application for renewal in the same manner and on the same form as if filing an initial application for commission. The renewal must be received by the Attorney General no later than the expiration date of the online notary public's current commission. The Attorney General shall determine eligibility for renewals according to the same standards as initial applications and shall not be bound by prior determinations of eligibility. Online notary public commissions will terminate on the same date on which the notary public commission terminates regardless of when the online notary public commission was granted.

§ 3103. Performance of Notarial Acts.

(a) An online notary public may perform authorized online notarial acts relating to electronic documents only if the principal personally appears before the online notary public at the time of the notarization; however, such personal appearance may be by means of an electronic two-way audio and video communication.

(b) An online notary public may perform authorized notarial acts by means of an electronic interactive two-way audio and video communication only when the online notary public is physically located within Guam, without regard to whether the principal is physically located in Guam at the time of the online notarization.

(c) An online notary public shall require the principal to demonstrate, to the satisfaction of the online notary public, that

such person is not under duress and is not otherwise being coerced to complete the transaction, in order to preserve the integrity, security, and authenticity of online notarizations. An online notary public is authorized to refuse to perform a notarial act when the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence.

(d) An online notary public must verify the identity of a principal at the time that the signature is taken by means of two-way video and audio conference technology. Identity may be verified by the online notary public's personal knowledge of the principal, or by:

(1) remote presentation by the principal of a non-military, government-issued credential, which is an identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service, and which is unexpired, contains the signature and a photograph of the principal, and which is capable of credential analysis in accordance with § 3105 of these Rules;

(2) credential analysis of the credential provided by the principal as set forth in § 3105; and

(3) identity proofing of the principal as set forth in § 3105.

(e) Under no circumstance shall an online notary public base identification merely on familiarity with a principal's electronic signature or an electronic verification process that authenticates the principal's electronic signature when the principal does not personally appear before the online notary public.

(f) The online notary public shall refuse to complete the performance of a notarial act where:

(1) the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;

(2) the online notary public is unable to verify the

identity of the principal using the means and the standards identified in these Rules;

(3) the online notary public becomes aware that the security of the two-way audio-visual transmission is not secure;

(4) the signature of the principal cannot be attached to the electronic document; or

(5) the online notary public's electronic notarial certificate and seal cannot be attached to the electronic document using an electronic technology which renders any subsequent change or modification to the document evident.

(g) The online notary public shall complete and attach an electronic notarial certificate to all written notarial acts that identifies the principal, the date of notarization, the address in which the notarization was performed, that the notarial act was an online notarization, and the type of notarial act performed. The electronic notarial certificate shall be signed by affixing or logically associating the online notary public's electronic notarial certificate, electronic signature, and electronic seal in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(h) An online notary public performing authorized notarial acts must also satisfy the following requirements. An online notary public, or his or her properly designated custodian or repository, must keep, for at least ten (10) years after the date of the transaction or proceeding, a secure electronic record of all electronic documents notarized by the online notary public, containing all of the following information:

- (1) the date and time of the notarization;
- (2) the type of notarial act;
- (3) the type, the title, or a description of the electronic document or proceeding;
- (4) the printed name and address of each principal involved in the transaction or proceeding;

(5) evidence of the identity of each principal involved in the transaction or proceeding in the form of:

(A) a statement that the principal(s) is personally known to the online notary public; or both

(B) a notation of the type of identification document provided to the online notary public for each principal; and

(C) a notation that the principal(s) completed identity proofing and credential analysis procedures described in § 3105 of these Rules and both were satisfactory to verify the identity of the principal(s);

(6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

(7) the fee, if any, charged for the notarization.

(i) The online notary public must take reasonable steps to ensure that the two-way video and audio communication used is encrypted during transmission, through means such as a virtual private network (VPN), and secure from unauthorized interception.

(j) The online notary public shall not disclose any access information used to affix the online notary public's electronic notarial certificate, signature, and seal, except when requested by the Attorney General, law enforcement, the court, or pursuant to an agreement between the online notary public and an electronic documentation preparation and transmission vendor, which agreement shall have in place reasonable precautions to prevent the unauthorized release of access information.

(k) The online notary public should ensure that all records relating to any individual transaction are securely stored using the Advanced Encryption Standard (AES) as a minimum encryption standard and that the principal's personally identifying information or any government-issued identification numbers cannot be accessed by unauthorized individuals. The online notary public should refrain from recording, or take steps to obscure from the recording, any identification number that was assigned to the

principal by a governmental agency or by the United States and any other number(s) that could be used to identify the principal.

(l) Records of an online notarization shall be retained, in a safe and secure manner, for ten (10) years following the date of the notarization. An online notary public must also maintain a backup of the electronic records for the same period of time. Both the original records and the backup shall be protected from unauthorized use. An online notary public may elect to store such recordings with a custodian or repository and such recordings may be stored separately from the journal as long as the corresponding journal entry cross-references the place of storage and describes the manner in which the record is stored.

(m) An online notary public may use his or her electronic signature only for performing online notarizations. The online notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record by also affixing his or her signature and seal to the copy of the electronic record in the traditional manner or other manner authorized by law.

§ 3104. Electronic Signature and Seal.

(a) An online notary public must use the same electronic signature for all online notarial acts performed by the online notary public.

(b) An online notary public must use the same electronic seal for all online notarial acts performed by the online notary public, and a copy of such seal must be provided to the Office of the Attorney General at the time of the online notary public's application for certification as an online notary public. The name on the online notary public seal must match the name, as stated on the application, under which the online notary public is commissioned and performs all notarial acts.

(c) An online notary public shall use an electronic seal that conforms to the following design: a rectangular seal with the notary public's name as it appears on the commission printed at the top, the address of the notary's business or residence printed at the bottom, the words "Notary Public, in and for the Territory of Guam, U.S.A." printed in the center, and the words "Online Notary Public" printed below. The electronic seal must also be

accompanied by a statement of the date upon which the online notary public's commission expires.

(d) An online notary public must attach or logically associate his or her electronic signature and seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) The online notary public must use technology from a third-party provider who has provided the online notary public with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.

(f) The electronic notarial certificate for an online notarization must contain a notation that the notarization is an online notarization, which may be satisfied by affixing the online notary public's seal to the electronic notarial certificate. The acknowledgment contained within the electronic notarial certificate must also contain a statement that the principal "personally appeared before me by audio-video communication" or "personally appeared by audio-video communication" or "before me appeared by audio-video communication."

(g) The online notary public's electronic notarial certificate, electronic signature, and electronic seal must remain within the exclusive control of the online notary public (including control by means of use of a password) at all times and shall be used only for the purpose of performing online notarial acts.

(h) The online notary public must provide any necessary instruction or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated. If at any time the online notary public adopts a new or additional technology or vendor with which to perform online notarial acts, the online notary public must notify the Office of the Attorney General of the new or additional technology, signature and/or seal, as well as any additional information that may be requested by the Office of the Attorney General.

§ 3105. Standards for Online Notarization.

(a) Identity proofing and credential analysis must be performed by a third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this Article.

(b) Requirements for Credential Analysis. A credential is a non-military identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service. In order to be valid, the credential must also be unexpired and contain the photograph and signature of the principal. Credential analysis is the process by which the validity of a non-military government-issued identification credential is verified. Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal. Credential analysis shall, at a minimum:

(1) use automated processes to aid the online notary public in verifying the identity of a principal;

(2) ensure that the credential passes an authenticity test, consistent with sound commercial practices that:

(A) use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features;

(B) use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;

(C) use reasonable efforts to utilize information held or published by the issuing source or authoritative source(s), as made generally available for commercial purposes, to confirm the validity of personal details and credential details; and

(D) provide output of the authenticity test to the online notary public; and

(3) enable the online notary public to visually compare

the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

(c) Requirements for Identity Proofing. Identity proofing is the process by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources. Identity proofing is performed through dynamic Knowledge Based Authentication (KBA) which meets the following requirements:

(1) the principal must answer a quiz consisting of a minimum of five (5) questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

(2) each question must have a minimum of five (5) possible answer choices;

(3) at least eighty percent (80%) of questions must be answered correctly;

(4) all questions must be answered within two (2) minutes;

(5) if the principal fails in his or her first attempt, the principal may retake the quiz one (1) time within twenty-four (24) hours;

(6) During the second attempt, a minimum of sixty percent (60%) of the prior questions must be replaced; and

(7) if the principal fails in his or her second attempt, the principal is not permitted to retry with the same online notary public for a period of twenty-four (24) hours.

(d) If the principal must exit the workflow, the principal must meet the criteria outlined in this Section and must restart the identity proofing and credential analysis from the beginning.

(e) An online notarization system used to perform online notarial acts by means of two-way audio-video communication shall:

- (1) provide for continuous, synchronous audio-visual feeds;
- (2) provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak with each other simultaneously through live, real-time transmission;
- (3) provide sufficient captured image resolution for credential analysis to be performed in accordance with these Rules;
- (4) include a means of authentication that reasonably ensures only authorized parties have access to the audio-video communication;
- (5) provide some manner of ensuring that the electronic record presented for online notarization is the same record electronically signed by the principal;
- (6) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz and the means and methods used to generate the credential analysis output; and
- (7) provide reasonable security measures to prevent unauthorized access to:
 - (A) the live transmission of the audio-video communication;
 - (B) a recording of the audio-video communication;
 - (C) the verification methods and credentials used to verify the identity of the principal; and
 - (D) the electronic documents presented for online notarization.

§ 3106. Fees.

An online notary public, or the online notary public's employer, may charge a fee that does not exceed Twenty-five

Dollars (\$25.00) for performing each online notarization.

§ 3107. Changes after Commissioning.

(a) An online notary public who changes his or her address, such that the online notary public no longer qualifies for either a traditional notary public commission or an online notary public commission, vacates the office of online notary public and must surrender the online notary public commission to the Attorney General of Guam.

(b) An online notary public who replaces or changes an electronic notarial certificate or electronic seal during the term of the online notary public commission must provide an updated copy of the electronic notarial certificate or electronic seal to the Attorney General prior to conducting any notarial acts using the updated electronic notarial certificate or electronic seal.

(c) If at any time during the term of the online notary commission the online notary public elects to use a new vendor or technology, or technologies, to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document, the online notary public must provide to the Attorney General the name of the vendor and electronic technology, or technologies, to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public's electronic signature and seal to be read and authenticated prior to conducting any notarial acts using the new vendor or technology, or technologies.

(d) If at any time during the term of the online notary public commission the online notary public elects to use a new vendor or technology, or technologies, to be used in conducting identity proofing and credential analysis, the online notary public must provide to the Attorney General the name of the vendor and electronic technology, or technologies, to be used in conducting identity proofing and credential analysis and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public to conduct identity proofing and credential analysis prior to conducting any notarial acts using the

new vendor or technology, or technologies.

§ 3108. Termination of Commission.

If the Attorney General of Guam determines that any online notary public has not complied with these regulations or the provisions of Chapter 33 of Title 5, Guam Code Annotated, related to online notarization, the Attorney General shall terminate the commission of the online notary public.
