

CHAPTER 3
SUPREME COURT OF GUAM

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§ 3101. Judicial Power.

The judicial power of Guam shall be vested in a Supreme Court and a court of general jurisdiction designated the Superior Court.

SOURCE: New to P.L. 21-147. See Organic Act (48 U.S.C.A.) § 1424-1.

§ 3102. Status of Supreme Court of Guam.

The Supreme Court of Guam shall be the highest court of Guam.

SOURCE: Not in original proposal. Added to later bills to make clear the status of the Supreme Court both with respect to the District Court, now that it is divested of all direct local appellate jurisdiction and to the status of attorneys before the Bar of Guam and other states. Often an attorney must be "admitted to practice before the highest court of" a jurisdiction in order to qualify for admission elsewhere or for employment.

§ 3103. Supreme Court; Composition.

(a) The Supreme Court of Guam is established pursuant to 22A of the Organic Act of Guam and has such original and appellate jurisdiction as is prescribed by the Organic Act of Guam and by this Title. The Supreme Court shall consist of three (3) full-time Justices who shall be appointed by *I Maga'lahaen Guåhan*, the Governor of Guam, subject to the advice and consent of *I Liheslatura*. Two (2) of the full-time Justices shall be Associate

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Justices and one (1) shall be Chief Justice, who shall be selected as provided herein.

(b) In addition, *I Maga'lahaen Guåhan* [the Governor] may appoint any Federal Judge or any Judge, retired Judge or retired Justice of a court of record in the Commonwealth of the Northern Mariana Islands, the Republic of Palau or the Federated States of Micronesia to sit as an acting Associate Justice. Such appointees shall be referred to as Designated Justices of the Supreme Court of Guam.

To be appointed, the individual shall have practiced law, or sat as a Judge, for a total of at least ten (10) years, be a graduate of a law school accredited by the American Bar Association, and, except for residency requirements and practice requirements on Guam, meet all other qualifications for a Justice. An appointment as a Designated Justice shall be for four (4) years and shall expire at the end of such period, unless the Designated Justice is reappointed by *I Maga'lahaen Guåhan* [the Governor]. All such appointments are subject to the advice and consent of *I Liheslaturan Guåhan* [Guam Legislature], and a Designated Justice may not sit until so confirmed.

The Designated Justices shall sit as assigned by the Chief Justice, and while sitting shall have all the powers of an Associate Justice, and shall be paid the same as a part-time Justice, unless some other arrangement has been made by the Chief Justice with the court from which the Designated Justice comes. Designated Justices are entitled to a per diem allowance when traveling away from home on official business for Guam at the rates set for other Associate Justices of Guam.

(c) The term Justice as used in this Title refers to all full-time and part-time Justices of the Supreme Court.

(d) [Repealed by P.L. 27-31:6]

(e) The term designated justice refers to a Judge or Justice who is qualified by this Title to sit.

(f) A Superior Court Judge who is elevated to the Supreme Court of Guam, may sit as a designated Judge of the Superior Court at the direction of the Chief Justice as requested by the Presiding Judge of the Superior Court for the purpose of hearing matters, which were pending before the Justice, immediately prior to his or her elevation from the Superior Court to the Supreme Court.

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(g) [Repealed by P.L. 27-31:6.]

(h) The first Chief Justice shall be selected by the Governor of Guam from among his confirmed appointees for full-time Justices, to serve as Chief Justice for a three- year term. The selection shall be made and shall be submitted to the Speaker of the Legislature. The first Chief Justice shall continue to serve as a Justice of the Supreme Court after his or her tenure as first Chief Justice is complete.

(i) Thereafter, the Chief Justice shall be selected from among the full-time Justices by a majority of all the Justices of the Supreme Court sitting en banc by secret ballot, to serve a three (3) year term commencing at the end of the term of the preceding Chief Justice and continuing until 10:00 o'clock AM on the third Tuesday of January three (3) years hence.

(j) No Justice may succeed himself or herself as Chief Justice.

(k) When a Chief Justice completes his or her term as Chief Justice, he or she shall continue to sit as a full-time Justice of the Supreme Court, until his or her term as Justice expires.

(l) In the event of the absence or disqualification of the Chief Justice, the senior full-time Associate Justice, who is the Justice with the longest years of service in the Supreme Court of Guam, shall act as Chief Justice.

(m) In the event of a disqualification, conflict, or recusal, of the Chief Justice in a given matter, the senior full-time Associate Justice shall act as Chief Justice as to that matter in making assignments of Justices and in other procedural matters. If no Justice is available, then one (1) designated Justice shall act as Chief Justice, in order of seniority.

(n) Part-time Justices may practice law or do other work, but may not work for, nor represent the government of Guam nor any autonomous agency thereof.

(o) In the event that a permanent vacancy occurs in the position of Chief Justice, the remaining Justices shall elect one (1) of their number to fill the unexpired term of the previous Chief Justice. In the event that the remaining term is less than two (2) years, the new Chief Justice may be re-elected notwithstanding paragraph (j) of this section.

SOURCE: Completely new composition of the Supreme Court in P.L. 21-147. Subsection (b) amended by P.L. 26-89:4. Subsections (a), (e), (f), (l) and (m) amended by P.L. 27-31:5 as part of the Court unification process. Subsections (d) and (g) repealed by P.L. 27-31:6.

§ 3104. Internal Organization of the Supreme Court.

(a) In hearings and determining the merits of cases before it, the Supreme Court shall sit in a three-Justice panel.

(b) Decisions Concerning Procedural Matters. As provided by the Court's Rules, the Supreme Court or any other court with appellate jurisdiction may appropriately delegate to a Justice or Judge or to a panel of the Court the authority to determine procedural matters incident to an appeal and other matters requiring determination pending decision on the merits.

1985 SOURCE: CCP § 61, part of § 62, modified to reflect Supreme Court and new structure of this Title. Subsection (a) amended by P.L. 27-31:7.

§ 3105. Jurisdiction of Superior Court.

The Superior Court shall have original jurisdiction over all causes of action, and, except for those causes exclusively vested in the Supreme Court, may have appellate jurisdiction as may be provided by the Legislature.

§ 3106. Compensation.

Until a specific salary is set for the Justices by another statute, the annual salary of the Chief Justice shall be Three Thousand Dollars (\$3,000) higher than the annual salary of the Presiding Judge of the Superior Court, and the annual salary of each of the full-time Associate Justices shall be Two Thousand Dollars (\$2,000) less than the annual salary of the Chief Justice.

The hourly salary of a Justice pro tempore shall be the same as the hourly salary of a full-time Associate Justice; provided, that:

(i) The total annual amount of salary may not exceed the annual salary of a full-time Justice;

(ii) No Justice pro tempore may be paid for more than forty (40) hours per week; and

(iii) No Justice pro tempore may be paid for more than eight (8) hours per day.

SOURCE: Amended by P.L. 27-31:8.

§ 3106.1. Annual Adjustment of Judges' Compensation.

(a) Annually, prior to October 1, the Judicial Council may, with reference to Title 7 GCA, Chapter 4, § 4101 (e), adjust the annual compensation of the Judges of the Superior Court, including the Presiding Judge and the Justices of the Supreme Court, for the next fiscal year by an

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amount not in excess of four percent (4%) more than the previous fiscal year's annual rate of compensation.

(b) Funding requirements for any adjustment approved by the Judicial Council should be contained within its approved fiscal year budget, provided, however, that if the salary adjustments are not directly cited in the budget, then any funding requirements shall be absorbed from its approved fiscal year budget.

(c) Funding for a salary increase should be included in the Judicial Council's annual budget request submitted to *I Liheslaturan Guahan*.

(d) The annual adjustment of the judicial salaries affected pursuant to this § 3106.1 shall take effect and be implemented at the beginning of the subsequent fiscal year following approval by the Judicial Council.

SOURCE: Added by P.L. 28-137:4 (July 11, 2006). Per section 6 of P.L. 28-137, the effective date of this section is upon enactment of rules, under 7 GCA § 4101(e), by the Supreme Court of Guam. Per the sunset provision of section 7 of P.L. 28-137, this section shall become void and of no effect on October 1, 2010. Amended by P.L. 30-061:1 (Nov. 25, 2009).

NOTE: P.L. 28-137:10 (July 11, 2006) provides: “[t]he initial implementation of the salary adjustment procedure provided by Title 7 G.C.A., Division 1, Chapter 3, § 3106.1 as enacted by Section 4 may be accomplished by the Judicial Council prior to October 1, 2006, instead of May 1, 2006, if the Supreme Court has complied with Title 7 G.C.A., Chapter 4, § 4101(e) as added by Section 1.”

§ 3106.2. One Time Adjustment of Judges' Compensation.

(a) In addition to the increase in compensation provided by enactment of 7 GCA § 3106.1, the annual rate of compensation of judges of the Superior Court shall be adjusted as follows:

(1) the annual rate of compensation of judges, except the Presiding Judge, shall increase by Four Thousand Dollars (\$4,000).

(2) the annual rate of compensation of the Presiding Judge shall be set in accordance with Title 7 G.C.A., Chapter 3 §3106.1(b).

(b) The salaries of any public officials that were previously based on the salary of the Presiding Judge or other judges of the Superior Court shall not be affected by the enactment hereof and the salaries of said public officials shall not change unless changed by law.

SOURCE: Added as an uncodified, permanent law by P.L. 28-137:5 (July 11, 2006) and codified by the Compiler as § 3106.2. Per P.L. 28-137:6, this section “shall take

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effect upon the selection of the Presiding Judge pursuant to Title 4 GCA, Chapter 4, § 4101(a).”

NOTE: P.L. 28-137:9 provides: “[t]he enactment hereof shall not affect the salary of the Presiding Judge until Section 5 [§ 3106.2] is effective.

§ 3107. Jurisdiction of the Supreme Court.

(a) Jurisdiction. The Supreme Court shall have authority to review all justiciable controversies and proceedings, regardless of subject matter or amount involved.

(b) Additional Authority. Its authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction. The Supreme Court shall have jurisdiction of all appeals arising from judgments, final decrees, or final orders of the Superior Court in criminal cases and in civil cases and proceedings. The Supreme Court has original and appellate jurisdiction over attorney disciplinary matters including but not limited to admissions, qualifications, and standards of practice; and supervisory jurisdiction over all inferior courts in Guam and may make and promulgate rules governing the practice and procedure in the courts. This does not include administrative authority otherwise specifically prescribed in § 5102 of this Act.

1985 SOURCE: CCP § 62, as amended by P.L. 12-85 and P.L. 13-187; and modified. Subsection (b) repealed and reenacted by P.L. 24-139:29. Subsection (b) amended by P.L. 27-31:9.

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 to give force to the supervisory powers of the Supreme Court and to reinstate an obsolete reference to appellate power over attorney discipline. Since the latter power was given, 7 GCA § 9101 and § 9104 have provided for attorney discipline to be taken over fully by the Supreme Court.

1985 COMMENT: This Section gives to the Supreme Court, as permitted by the Omnibus Territories Act of 1984, the appellate power over the Superior Court. Since other laws, including 8 GCA Ch 130, Title 15 GCA and sections in this Title all provide for appeals from specific non-final judgments, orders, etc., the Law Revision Commission believed that repetition here of the local of the specific laws on appeals was unnecessary and could cause trouble if the other laws were to be amended to include new areas of appeal and this section forgotten.

§ 3108. Appealable Judgments and Orders.

(a) Final Judgment. Appellate review to the Supreme Court shall be available only upon the rendition of final judgment in the Superior Court from which appeal or application for review is taken.

(b) Interlocutory review. Orders other than final judgments shall be available to immediate appellate review as provided by law and in other cases only at the discretion of the Supreme Court where it determines that resolution of the questions of law on which the order is based will:

(1) Materially advance the termination of the litigation or clarify further proceedings therein;

(2) Protect a party from substantial and irreparable injury; or

(3) Clarify issues of general importance in the administration of justice.

(c) Concurrence. (1) Quorum and determination of a cause. A majority of the number of Justices authorized to constitute a panel as provided by the Rules of the Supreme Court shall constitute a quorum for the purposes of hearing and deciding an appeal or a matter of original jurisdiction. A decision shall be determined by a majority vote of a panel. In the event that a panel is evenly divided on an appeal, the decision appealed from is sustained.

(2) Actions by Chief Justice alone; writs by individual Justices. The Chief Justice alone, or an Associate Justice sitting in his or her place, may make any appropriate order with respect to an appeal or dismiss an appeal for want of jurisdiction or failure to take or prosecute an appeal in accordance with applicable law or rules of procedure. Each of the Justices shall have the power to issue writs of habeas corpus upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or herself or before the Supreme Court or before the Superior Court or before any Judge thereof on behalf of any person held in custody.

1985 SOURCE: CCP § 63, as amended by P.L. 12-85. Subsection (b) -- § 134 CCP. Subsection (c) -- CCP § 165 (before enactment of P.L. 12-85), modified. Second paragraph of CCP § 62.

§ 3109. Nomination, Appointment, Eligibility and Tenure of Justices and Judges.

(a) *I Maga'lahaen Guåhan* [The Governor of Guam], with the advice and consent of *I Liheslaturan Guåhan* [the Legislature], shall appoint a qualified person to each of the positions of Justice created by this Title; and subject to the advice and consent of *I Liheslaturan Guåhan*, appoint a qualified person to any vacancy occurring in either the Supreme Court or the Superior Court of Guam, and to any newly created position of Justice or Judge authorized by statute.

The Judicial Council and the Guam Bar Association may each submit a list of qualified nominees for *I Maga'lahaen Guåhan's* [the Governor's] consideration. No sitting Judge of the Superior Court of Guam shall be excluded from the pool of nominees for the Supreme Court of Guam.

(b) [Repealed by P.L. 27-31:10]

(c) The Chief Justice and each Associate Justice of the Supreme Court of Guam shall be a United States citizen, a bona-fide resident of Guam for at least five (5) years and shall have been in the active practice of law on Guam for a period of at least ten (10) years before said nomination. The Presiding Judge and each other Judge of the Superior Court of Guam shall be a United States citizen, a bona-fide resident of Guam for at least five (5) years and shall be in the active practice of law on Guam for a period of seven (7) years before said nomination.

(d) No Justice or Judge shall, during the term of office, engage in the private practice of law. No Justice or Judge shall, during the term of office, run for or hold any other office or position of profit under the United States, any State, Guam or any other political subdivision of the United States.

(e) 'Active practice of law' includes time spent as a Justice or Judge on Guam.

(f) Any sitting Justice or Judge residing in the CNMI and admitted to the practice of law in the CNMI shall be eligible to sit on the Bench on the Supreme Court of Guam or the Superior Court of Guam; provided, that the Justices and Judges from Guam are accorded the same reciprocity by the CNMI.

SOURCE: Basic substance from prior law. New qualifications added in P.L. 21-147. Subsection (c) amended by P.L. 22-108:18 (4/1/94) to reduce the number of years required to become a judge. R/R by P.L. 26-89:2. Subsection (b) repealed by P.L. 26-31:10. Subsection (b) repealed by P.L. 27-31:10.

§ 3110. Annual Address.

[Repealed.]

1985 SOURCE: CCP § 68 (P.L. 12-85). Repealed by P.L. 25-03:IV:16.

§ 3111. Pending Appeals.

All actions and proceedings arising under the laws of Guam pending in the District Court, Appellate Division, prior to the effective date of this Chapter shall be prosecuted to final determination in that court as though this Chapter had not been enacted. All appeals pending before the United States Court of Appeals for the Ninth Circuit shall remain in said court until concluded and the District Court of Guam shall retain jurisdiction to enter such orders, decrees, and judgments and conduct any appropriate proceedings in accordance with the ultimate mandate issued on any such pending appeals.

1985 SOURCE: Former CCP § 65 as enacted by P.L. 12-85.

CROSS-REFERENCES: See § 1102 and § 1103(c) of this Title.

§ 3112. Office of Public Guardian. Office of Public Guardian; Establishment; Appointment.

There is hereby established within the government of Guam an Office of Public Guardian (Office). The Public Guardian of the Office is the head of the Office. The Chief Justice shall appoint the Public Guardian, who shall serve at the Chief Justice's pleasure.

(a) Powers and Duties.

(1) The Public Guardian shall serve as guardian, limited guardian, testamentary guardian or temporary guardian of the person and/or estate of an elderly or mentally incapacitated individual when so appointed by the Family Court under Chapter 1 of Appendix C of Title 7 of the Guam Code Annotated. The Public Guardian shall file a petition for the Public Guardian's own appointment. Petitions for public guardianship may also be filed by any person, agency, or facility responsible for the support or care of individuals who:

(i) are not able to understand or adequately participate in decisions concerning their care; and

(ii) have no relatives or friends willing and able to act as guardian.

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(2) The Public Guardian shall have the same powers and duties as a private guardian.

(3) The Public Guardian shall assist the Court, as the Court may request or direct, in proceedings for the appointment of a guardian of the person and in the supervision of persons, corporations or agencies which have been appointed as guardians of the person.

(4) The Public Guardian shall advise and assist persons, corporations, and agencies which are seeking appointment as a guardian for an incapacitated person. The Public Guardian shall also provide advice, information and guidance to the persons, corporations or agencies who have been appointed as guardian of the person to assist them in the discharge of their duties.

(5) The Public Guardian may offer guidance and counsel, without court appointment as guardian, to those persons who request such assistance or to those on whose behalf it is requested for the purpose of encouraging maximum self-reliance and independence of such persons, and avoiding the need for appointment of a guardian.

(6) The Public Guardian shall develop programs of public education on guardianship and alternatives to guardianship and encourage the development of private guardians able and willing to serve as guardian for the person.

(b) Public Guardianship Review Board. Persons, corporations and/or agencies appointed guardians shall be consistently monitored through a Public Guardianship Review Board. Every six (6) months, the Board shall review the care and protection of those persons who are under guardianship by the Office of the Public Guardian. The review Board may review cases before the six (6) month period upon the request of the majority of the members of the Board. This review Board shall consist of eleven (11) members:

(1) one (1) social worker appointed by the Director of the Department of Public Health & Social Services;

(2) one (1) physician appointed by the Administrator of the Guam Memorial Hospital Authority;

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(3) one (1) nurse appointed by the Director of the Department of Public Health and Social Services;

(4) one (1) representative of the Guam Council on Senior Citizens;

(5) one (1) representative from a local nonprofit social service organization providing service to those with developmental disabilities, appointed by the Speaker of *I Liheslaturan Guåhan*;

(6) one (1) attorney appointed by the Guam Bar Association;

(7) one (1) representative from a local nonprofit social service organization providing services to the youth, appointed by the Speaker of *I Liheslaturan Guåhan*; and

(8) three (3) members of the community at large appointed by the Speaker of *I Liheslaturan Guåhan*.

(9) one (1) psychiatrist appointed by the Director of the Guam Behavioral Health and Wellness Center.

(c) When Not Appointed. The Public Guardian shall not be appointed if another suitable guardian is available and willing to accept the guardianship appointment, unless the Court finds that the best interests of the ward would be better served by the appointment of the Public Guardian.

(d) Court Costs. In any proceeding for appointment of a Public Guardian, the Court may waive any court cost or filing fee.

(e) Fees of Services; When *Not* Allowed. The Public Guardian may receive such reasonable fees for services as a public guardian as the Court allows.

(1) No fees shall be allowed which would unreasonably diminish the ward's estates so as to endanger the ward's financial independence, and no fees shall be allowed when the ward's primary source of support derives from public funds.

(2) Any fees received under this Section by the Public Guardian shall be deposited into the *Public Guardian Fund*.

(3) No fees shall accrue to the individual benefit of the Public Guardian.

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(f) Rules. The Public Guardian shall develop rules and regulations in compliance with the Administrative Adjudication Law.

(g) Annual Report. The Public Guardian shall prepare and submit an annual report to the Chief Justice, and render such other reports as the Chief Justice may from time to time require.

(h) Funding. Funding for the Office of the Public Guardian shall be included in the budget of the Judiciary.

(i) Contracts. The Public Guardian may make and enter into contracts, and generally do all such things as in the Public Guardian's judgment may be necessary, proper and expedient in accomplishing the Public Guardian's duties.

(j) Volunteers Authorized. The Public Guardian is authorized to solicit and accept services of individuals and organizations on a voluntary basis in its programs in a carefully planned and supervised manner.

(k) Withholding Consent to Waiver of Sovereign Immunity. Notwithstanding anything in Guam law to the contrary, in accordance with § 1421a of the Organic Act of Guam, *I Liheslaturan Guåhan* therein declines to waive sovereign immunity as to the Office of the Public Guardian and the Supreme Court of Guam for any tort arising out of or committed under the voluntary program as set out in 7 GCA § 3112 (j).

(l) Solicitation of Money Permitted. The office of the Public Guardian may solicit and accept voluntary charitable monetary donations and may apply for and accept public or private grants it may be eligible to receive. All expenditures for solicitation of or application for such donations or grants shall be prudent and reasonable.

(m) Fund Created. There is hereby created, separate and apart from other funds of the government of Guam, a fund known as the 'Public Guardian Fund' ('Fund'). The Fund shall not be commingled with any other fund and shall be deposited into a separate account. All fees, charitable monetary donations, and public and private grants collected pursuant to this § 3112 shall be deposited into the Fund and it shall be administered by the Public Guardian. The Fund shall be used for the purpose of the administration and operation of the Office of the Public Guardian. The Public Guardian shall make an annual report to

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the Chief Justice of the Supreme Court of Guam and *I Liheslaturan Guåhan* of the condition of, and activity within, the Fund.

SOURCE: Added by P.L. 25-103:2. Subsections (b)(2) and (b)(4) amended by P.L. 26-6:1 and 2. Subsection (b)(9) added by P.L. 26-64:3. Subsection (e)(2) amended by P.L. 26-112:6. Subsection (j) through (m) added by P.L. 26-112:2-5.

2013 NOTE: Pursuant to P.L. 32-024:2 (May 6, 2013) which renamed the Department of Mental Health and Substance Abuse (DMHSA) to the Guam Behavioral Health and Wellness Center, and all references to DMHSA were altered to to the Guam Behavioral Health and Wellness Center.
