

7 GCA CIVIL PROCEDURE
CH. 4 SUPERIOR COURT

CHAPTER 4
SUPERIOR COURT

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ARTICLE 1
GENERAL PROVISIONS

- § 4101. Superior Court: Nature and Composition.
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- § 4103. Powers of the Presiding Judge.
- § 4104. *I Maga'lahi* and *I Liheslatura* May Request Declaratory Judgments.
- § 4105. Certifying Questions of Law.

§ 4101. Superior Court: Nature and Composition.

(a) The Superior Court of Guam is a court of general jurisdiction in Guam, having original jurisdiction as prescribed by this Title and in other laws of Guam which are not within the exclusive jurisdiction of the Supreme Court of Guam or the District Court of Guam. The Superior Court shall consist of a presiding judge and six (6) additional judges. The Judges of the Superior Court shall be appointed as provided in this Title. The Presiding Judge holding office on the effective date of this Act shall remain Presiding Judge for so long as he shall remain a Judge of the Superior Court. Thereafter, however, the Judges of the Superior Court shall elect one (1) of their number Presiding Judge. The first elected Presiding Judge shall serve until the third Tuesday of the first January occurring three (3) years after his or her election. Thereafter a Presiding Judge shall serve a term of three (3) years, unless he or she is elected to fill a vacancy, in which case he or she shall serve only the remainder of the unexpired term of his or her predecessor. No person may be elected to consecutive terms as a Presiding Judge.

(b) If the Judicial Council determines that additional Judges are required for the proper dispatch of business, the Chief Justice shall so notify *I Maga'lahi* [the Governor], who, if he or she concurs, shall appoint a new Judge as in the case of a vacancy.

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(c) If, for any reason, a vacancy is created in the Superior Court and the Judicial Council determines that the business of the Court is such that no new Judge is required to fill the vacancy, the Chief Justice shall so declare, and upon such declaration, no Judge shall be appointed to fill the vacancy until the Judicial Council again determines that a need exists and proceeds in the manner prescribed by Subsection (b) of this § 4101.

(d) All Judges sitting on the effective date of this Chapter shall continue to sit for the remainder of their respective terms without need for reappointment, reconfirmation or additional declarations required by this § 4101.

(e) Enactment of Rules on Case Management and Disposition. The Supreme Court shall enact rules governing the efficient dispatch of the Superior Court's business, including the following:

(1) time frames and deadlines for matters taken under submission to provide speedy and efficient disposition of cases;

(2) compilation of data and statistics regarding the court and each judge's performance and publication of the same on the Supreme Court website. Said compilation shall include, but not be limited to, the number of motions filed in cases pending before each judge, the number of motions and trials to the court which each judge has had under submission more than sixty (60) days, and the number of motions and trials to the court each judge has had under submission more than one hundred twenty (120) days prompt and equitable assignment and distribution of cases and workload and time off among the judges;

(3) assignment, management, distribution, processing, scheduling and disposition of cases in the Superior Court;

(4) whether a referee or hearing officer may hear a case; and

(5) any other matters which affect the prompt, fair and just disposition of cases in the Superior Court.

SOURCE: Section amended by P.L. 22-75 (3/3/94). Subsection (b) repealed and reenacted by P.L. 24-139:30. Subsection (c) repealed and reenacted by P.L. 24-139:31. Subsection (b) and (c) amended by P.L. 27-31:11. Subsection (e) added by P.L. 27-31:12. Subsection (e) repealed and reenacted by P.L. 28-137:1 (July 11, 2006).

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

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as there were no amendments prior to P.L. 24-139. The main difference is to return the authority to the Chief Justice from the Judicial Council.

COMMENT: (1994) The Legislature had pending before it prior to the adoption of the Supreme Court law (including this Chapter) a bill increasing the number of Superior Court judges. That bill amended § 81 of the Code of Civil Procedure, which was repealed by the Supreme Court law. When the bill became law, it amended § 81 of the CCP by repealing and reenacting it with only the sentence in boldface. The Legislature apparently was not aware that the new law (this Chapter) rendered such a detailed amendment obsolete.

Also, there is no hint that the Legislature intended to repeal all that is part of this section (§ 4101) in this new Chapter of Title 7. Therefore, the Compiler has followed the intent of the Legislature in inserting the new sentence in place of the former sentence, but has not repealed the remainder of this § 4101 -- since the Legislature did not reference it in P.L. 22-75.

At one time the Superior Court stated that the Legislature could not amend a repealed law. However, in this case the intent is clear -the addition of a new judge - and that intent has, in fact, been carried out. Therefore, the Compiler will assume that at least this one sentence has been amended as the Legislature intended.

The Legislature enacted, as Sec. 1 to P.L. 22-75, the following statement of intent:

The Legislature finds that the Superior Court of Guam is in need of an additional judge in order to provide for more efficient and effective administration of justice and to provide for the Constitutional guarantee of a speedy trial. The Legislature has learned that a majority of the legal community of Guam is of the consensus that an additional judge is needed to insure the effective administration of all types and levels of cases, which are presently backlogged at the Court.

COMMENT: New to 1992 Act is provision for a rotating Presiding Judge - to take effect after the incumbent Presiding Judge leaves the Bench.

1985 SOURCE: New section, but compare CCP § 81 in part.

1985 COMMENT: The confusion arising over the appointment of Judge Diaz (August 1980) and the appointment of Attorney Crain (who was not confirmed by the Legislature) (December 1982) has shown that there is no clear means by which a new judicial position is created. Judge Diaz was appointed and confirmed as judge before any new position was funded. However, the funding was authorized by the Legislature before the new judge was sworn in and took office.

To remedy this situation P.L. 15-140:2, in amending § 81 of the CCP, stated that there are "a presiding judge and 5 additional judges". However, with the resignation of Judge Benson, there was no hurry in filling that vacancy because all concerned believed that the business of the court did not require an additional judge. Therefore, this Section takes care of not only increased judicial business, but also decreased judicial business. This Section will also take care of the problem occurring in 1982 when the Bar Association still believed that no new judge was required, but the Governor disagreed.

§ 4102. Appellate Jurisdiction and Procedure.

The Superior Court shall have appellate jurisdiction in all cases tried and determined in the:

(a) Traffic Division wherein the amount of the fine levied is more than One Hundred Fifty Dollars (\$150). Such an appeal shall be taken within five (5) court days after the judgment is rendered by the Traffic Division and shall be taken by filing a written notice of appeal with the Clerk of the Superior Court. The appeal shall be a trial on the merits de novo;

(b) Small Claims Division pursuant to Article 2 of this Chapter.

COMMENT: Reference to Small Claims Division added to reflect creation of Small Claims Division by statute.

1985 SOURCE: CCP § 83 (P.L. 12-85) as modified.

1985 COMMENT: The appellate function over traffic cases is retained in the Superior Court. However, former § 83 CCP is modified to reflect the actual situation in which the traffic division does not hear cases in which imprisonment may be imposed, the nomenclature of the courts adopted by this Title and the procedure and rule-making powers, also adopted by this Title.

Former § 83 CCP was repealed by P.L. 13-187 upon adoption of the Criminal Procedure Code. Section 1.09(b) provides that a defendant in the traffic court shall have a right to appeal and obtain a trial de novo in any case. This Section adopts that, and provides for a more detailed procedure than is stated in the Criminal Procedure Code. In that Code no mention is made as to times, nor methods of appeal to the Superior Court.

§ 4103. Powers of the Presiding Judge.

The Presiding Judge of the Superior Court shall prescribe the order of business and randomly assign the cases to the Judges, Referees, and Hearing Officers of the Court in conformance with rules and regulations promulgated by the Supreme Court. During the Presiding Judge's temporary absence or temporary disability, his or her duties shall be performed by his or her designated appointee. Appointment shall be on a rotating basis among all the Judges of the Superior Court. The Presiding Judge shall be responsible for preparing the annual budget of the Superior Court and its divisions for the review, recommendation and approval of the Judicial Council.

SOURCE: Amended by P.L. 23-86:4 (4/29/96). Repealed and reenacted by P.L. 24-139:32. Amended by P.L. 27-31:13.

§ 4104. *I Maga'lahi* and *I Liheslatura* May Request Declaratory Judgment.

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I Maga'lahen Guåhan, in writing, or *I Liheslaturan Guåhan*, by resolution, may request declaratory judgments from the Supreme Court of Guam as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of *I Maga'lahi* and the operation of the Executive Branch, or *I Liheslaturan Guåhan*, respectively. The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay. Such declaratory judgments *shall* not be available to private parties. The Supreme Court of Guam *shall*, pursuant to its rules and procedure, permit interested parties to be heard on the questions presented and *shall* render its written judgment thereon.

SOURCE: Repealed and reenacted by P.L. 24-61:3. Repealed by P.L. 28-146:1 (August 15, 2006). Added by P.L. 29-103:2 (July 22, 2008).

1985 SOURCE: Article 4(c) Constitution of Florida, as modified by Massachusetts Constitution, Article of Amendment No. 85 amending Art. 2 of Ch. 3 of the Mass. Constitution.

1985 COMMENT: Several states permit the governor, and Massachusetts permits the Governor, Legislature and Council, to seek opinions from their respective Supreme Courts on matters respecting the duties of the Governor and Legislature. It has been this drafter's experience that such a grant of jurisdiction would have solved many serious questions which have arisen, but which have lacked a forum for decision.

Under the usual rule, no case may be brought until it has ripened into a "case or controversy". This section will permit important issues to be decided before that time and will avoid the necessity of creating harm to some party in order to have a decision. Thus, a Massachusetts Opinion of the Justices determined certain powers of the Legislature and Governor before any employees had to be laid off. This Section would permit a better resolution of serious questions than occurred in the 1978 District Court decision of *Wong v. Camina* wherein the Court decided a question relating to federal grants. No defendant was forthcoming, so the case was decided essentially on a default. This Section would permit a full hearing in such cases and decisions rendered under this Section would be binding.

Note that the language permits the Governor to request opinions as the operation of the Executive Branch, including questions involving separation of powers, and the Legislature to request opinions on the operation of that Branch, but does not permit one Branch to request opinions as to the operation of the other where that operation does not impinge on the requesting branch's operations. The purpose of this limitation is to avoid one branch trying to regulate the other through the courts.

§ 4105. Certifying Questions of Law.

Any judge of the Superior Court of Guam may certify a question of law to the Supreme Court of Guam for its opinion as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam

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to decide, and arising in a case or proceeding then pending before the Superior Court.

ARTICLE 2
SMALL CLAIMS DIVISION

- § 4201. Title.
- § 4202. Jurisdiction.
- § 4203. Removal.
- § 4204. Fees.
- § 4205. Referees.
- § 4206. Rules and Regulations.
- § 4207. Jurisdiction over Housing Claims.
- § 4208. Mandatory Annual Review of Jurisdictional Limits.

§ 4201. Title.

This Article may be cited as the *Small Claims Court Act*. A Small Claims Division is created within the Superior Court of Guam on the following terms and conditions.

SOURCE: Enacted as Chapter III-B of Title 1 of the Code of Civil Procedure by P.L. 20-28. This law was not included in the Supreme Court Act, which constitutes Chapters 1 through 9 of this Title. However, since this section was referred to in Article 1 of this Chapter, which was part of the Supreme Court enactment, the Compiler is including this Article here on the presumption that it was never repealed by the Supreme Court Act.

The original law enacted this entire Article as “Section 100”. The Compiler has changed the respective subsections into separate sections in order to conform to the format of the Guam Code Annotated and to make the Article easier to understand and locate.

COMMENT: The Legislature stated its Intent preceding Section 1 as follows:

The Legislature finds that due to high legal fees and the lack of attorneys willing to take cases involving small amounts, the courts are effectively unavailable to small claims litigants, and the current small claims court system is inadequate to address this problem; accordingly.

§ 4202. Jurisdiction.

Any person having a claim of \$10,000 or less may apply for relief through the Small Claim Division. Counterclaims or cross-claims may also be filed for up to \$10,000. If a bona fide counterclaim or cross-claim is in excess of \$10,000, the matter shall be handled as a regular civil, or other

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case. No attorney's fee may be awarded in small claim cases. Any person having a claim against him or her for more than \$5,000 may make a timely application to the court for transfer of the matter out of the Small Claims Division to be handled as a regular civil or other case within the Superior Court of Guam, which motion, if timely made, shall be granted as a matter of right.

§ 4203. Removal.

Any person against whom a claim is filed in the Small Claims Division may apply to the court for transfer of the matter out of the Small Claims Division to the Superior Court of Guam to be handled as a regular civil or other case. The court may grant such a motion only upon a showing of significant prejudice for the applicant if the matter continues in the Small Claims Division, or a clear showing by the applicant that the Small Claims Division is an inappropriate forum. The court may consider the costs of pursuing a regular case and availability of attorneys who might handle the matter as some of the deciding factors. Such motions for discretionary transfer shall be disfavored, and shall be granted only in exceptional cases.

§ 4204. Fees.

The filing fee for filing a complaint or counterclaim or cross-claim in small claims cases shall be 1 percent of the amount claimed for the first \$1,000, and 2 percent for all amounts thereafter; provided, that the total filing fee does not exceed the cost of filing a civil case in the Superior Court of Guam.

§ 4205. Referees.

Small claims cases may be heard by any Judge of the Superior Court of Guam. However, the Presiding Judge of the Superior Court may nominate one (1) or more Small Claims Referees from among the members of the Guam Bar Association, with the approval of the Judicial Council. Referees shall hear small claims cases pursuant to court rules, and shall have the power of a Superior Court Judge in respect to such small claims matters. Such appointments for Referees shall be for one (1) year or less. The Judicial Council may reappoint incumbent Referees for additional terms of one (1) year or less. Referees may be disqualified from hearing a matter in the same manner as a Judge of the Superior Court may be disqualified.

SOURCE: Amended by P.L. 27-31:14.

§ 4206. Rules and Regulations.

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The Judicial Council shall develop forms and rules and regulations for the Small Claims Division, which shall not permit jury trials in small claims cases; shall provide for expedited handling of small claims cases and the collection of small claims judgments without the need that either party have representation by an attorney; shall provide for circumstances under which applicants may be represented by an attorney and may limit or prohibit representation of parties by attorneys in small claims; provided, however, that if one party is represented by an attorney then the other party must be given the opportunity to obtain an attorney, if such other party makes an appearance; may provide for relaxed rules of evidence for small claims litigants; as to proof of damages shall develop and promulgate reasonable rules which are reasonable and fair, taking into account common sense and practices in claims settlement, and taking into account normal insurance industry practices used by insurance adjusters in determining damages on Guam; shall provide rules for appeal de novo to the Superior Court of Guam as may be appropriate; shall provide for discovery upon prior specific approval by the court; shall provide for declaratory type or other relief in disputes over utility billings with provisions for continuing utility service during the period of the dispute, and with sanctions for bad faith disputes over utility billings; and shall provide for such other matters as the Judicial Council deems appropriate for the Small Claims Division. The rules may prohibit, regulate or restrict the appearance by attorneys, agents, and employees of the parties in the Small Claims Division.

§ 4207. Jurisdiction over Housing Claims.

The Small Claims Division may hear rent and landlord-tenant disputes and may, with or without bond, enjoin the eviction of the tenant pending the outcome of any bona fide rent dispute or landlord-tenant dispute, and may, as a part of its final order, make appropriate orders of eviction.

§ 4208. Mandatory Annual Review of Jurisdictional Limits.

In April of each year commencing with 1990, the Judicial Council shall consider adjustment of the jurisdictional limits for the Small Claims Division, and may adjust upwards the jurisdiction limits of the amount of claims allowed in the Small Claims Division based upon increases in the cost of living indices prepared by the Guam Department of Commerce and the United States government, and based upon the availability of attorneys to take small claims cases.

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ARTICLE 3
ALTERNATE DISPUTE RESOLUTION OFFICE

- § 4301. Alternate Dispute Resolution Office.
§ 4302. Duties.

§ 4301. Alternate Dispute Resolution Office.

There is within the Judicial Branch the Alternate Dispute Resolution Office under the direction of the Presiding Judge and the Judicial Council.

§ 4302. Duties.

The Office shall facilitate dispute resolution without litigation. It shall provide training and services for mediation, conciliation, arbitration and other means of settling conflicts or disputes among residents of Guam.

SOURCE: Added by P.L. 19-05:129 as §§ 205 and 206 of the Code of Civil Procedure.

ARTICLE 4
MAGISTRATES AND SATELLITE COURTS

SOURCE: Added by P.L. 29-109:2 (Aug. 26, 2008).

- § 4401. Magistrates.
§ 4402. Satellite Courts.

§ 4401. Magistrates.

(a) The Chief Justice of the Supreme Court of Guam may appoint such magistrates as are necessary for the proper administration of justice. A magistrate *shall* be appointed as follows:

- (1) Upon request by the Chief Justice, the Guam Bar Association will solicit interest for the position of magistrate;
- (2) The Guam Bar Association will then submit the names of three (3) candidates to the Chief Justice;
- (3) The Chief Justice must appoint the magistrate from the list provided by the Guam Bar Association.

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(4) The appointment by the Chief Justice is subject to the approval of *I Liheslaturan Guåhan*.

(b) A magistrate *shall*:

(1) serve a four (4) year term, removable for cause;

(2) be at least thirty (30) years of age;

(3) meet the qualifications required of a Superior Court Judge as articulated by §§ 3109(c), (d) & (e), Title 7, GCA;

(4) be a member in good standing of the Guam Bar Association;

(5) not have been convicted of any felony *or* any misdemeanor involving moral turpitude;

(6) not be related by blood within the third degree of consanguinity *or* marriage to a judge *or* justice of the courts of Guam at the time of his *or* her initial appointment;

(7) be subject to the same ethical standards as a Superior Court Judge *or* Justice, to include the Guam Rules for Judicial Disciplinary Enforcement; and

(8) receive a salary *no greater than* ninety percent (90%) of a Judge who is *not* the Presiding Judge.

(c) As assigned by the Chief Justice, a magistrate *shall*:

(1) preside over and render decisions and judgments in small claims cases, traffic cases, change of name petitions, and collection cases, and may grant uncontested divorces in cases where there is a notarized consent on file;

(2) enter judgment upon confession of judgment or default judgment in a civil case when a party alleges a sum certain is due;

(3) preside over post-judgment collection proceedings in civil cases and restitution judgments in criminal cases, and issue writs of execution and other orders in such proceedings;

(4) preside over first appearances of criminal defendants and arraignments in criminal cases, set bail and order pre-trial release conditions, take pleas, including accepting guilty pleas in misdemeanor cases, sentencing misdemeanants and entering judgments accordingly;

(5) issue summons, issue bench warrants, and hear return of warrants in all cases to which assigned;

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(6) preside over any matters which may be heard by a Referee of the Superior Court of Guam;

(7) serve as a Special Master upon appointment by the Presiding Judge;

(8) serve as Judge *Pro Tempore* upon appointment by the Chief Justice; and

(9) serve as a settlement judge in a civil or domestic case upon appointment by the Presiding Judge.

(d) The Chief Justice may reappoint a sitting magistrate without confirmation by *ILiheslaturan Guåhan* upon a unanimous recommendation of the Judicial Council:

(1) for one (1) additional term of four (4) years; *or*

(2) until a new magistrate is appointed and duly confirmed, but *not to exceed* ninety (90) days.

SOURCE: Subsection (c) amended by P.L. 31-163:2 (Jan. 4, 2012). Subsection (d) added by P.L. 31-163:2 (Jan. 4, 2012).

§ 4402. Satellite Courts.

The Chief Justice of the Supreme Court of Guam is hereby authorized to establish a Northern Court Satellite (NCS).
