

7 GCA CIVIL PROCEDURE
CH. 14 MANNER OF COMMENCING CIVIL ACTIONS

CHAPTER 14
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NOTE: CCP § 405, *Actions, how commenced*, has been replaced by GRCP Rule 3.

§ 14101. Endorsement of Complaint.

The clerk of the court must endorse on the complaint the day, month and year that it is filed, and at any time within one year thereafter the plaintiff may have the summons issued, and if the action be brought against two or more defendants, for each at the same time. But at any time within the year after the complaint is filed, the defendant may, in writing, or by appearing and answering or demurring [filing the appropriate motion], waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year at any time before trial.

SOURCE: CCP § 406.

COMMENT: While some of the contents of this section are contained in GRCP Rule 4, other parts appear substantive and, thus, cannot be replaced by the Rules of Civil Procedure.

Demurrers have been abolished and replaced by the appropriate motions.

NOTE: Section 407, *Summons; Must contain*, has been replaced by GRCP Rule 4.

§ 14102. Alias Summons.

If the summons is returned without being served on any or all of the defendants, or if it has been lost, the clerk, upon the demand of the plaintiff, may issue an alias summons in the same form as the original, and within such time as the original may have been served if it has not been lost or returned.

SOURCE: CCP § 408.

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§ 14103. Notice of Lis Pendens.

In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing an answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the Department of Land Management, a notice of the pendency of the action containing the names of the parties and the object of the action or defense, and a description of the property affected thereby. From the time of filing such notice for record only, shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

SOURCE: CCP § 409.

§ 14104. Who May Serve Summons; Certificate.

The summons may be served by any peace officer where the defendant is found, or by any other person over the age of eighteen (18) not a party to the action. A copy of the complaint must be served, with the summons, upon each of the defendants. When the summons is served by a peace officer, it must be returned, with his certificate of its service, and of the service of a copy of the complaint, to the office of the clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

SOURCE: CCP § 410.

CROSS-REFERENCE: Rule 4 of the Guam Rules of Civil Procedure.

§ 14105. Service of Summons.

The summons must be served by delivering a copy thereof as follows:

1. If the suit is against a domestic corporation, to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, general manager, or a person designated for service of process or authorized to receive service of process. If such corporation is a bank, to any of the foregoing officers or agents, thereof, or to a cashier or an assistant cashier thereof. If no such officers or agents of the corporation can be found within Guam after diligent search, then to the Director of Revenue and Taxation as provided in 18 GCA § 6101, unless the corporation be of a class expressly excepted from the operation of that section.

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2. If the suit is against a foreign corporation, or a nonresident joint stock company or association, doing business in Guam, in the manner provided by 18 GCA § 6101.

3. If against a minor, under the age of fourteen (14) years, residing in the territory of Guam, to such minor, personally, and also to his father, mother, or guardian; or if there by none in Guam, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If against a person residing in Guam, who has been judicially declared to be of unsound mind or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person, and also to his guardian.

5. In all cases where a corporation has forfeited its charter or right to do business in Guam, or has dissolved, by delivering a copy thereof to one of the persons who have become the trustees of the corporation and of its stockholders or members, or, in a proper case, as provided in 18 GCA § 6101 or § 7102.

6. Except as otherwise provided by statute, a summons shall be served on a person;

(a) Within Guam, as provided in this Chapter;

(b) Outside of Guam but within the United States, as provided in this Chapter, or as prescribed by the law of the place where the person is served;

(c) Outside of the United States, as provided in this Chapter, or as directed by the court in which the action is pending, or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory.

(7) In all other cases to the defendant personally.

SOURCE: CCP § 411, amended by P.L. 13-131:1.

COMMENT: Because the Legislature has specifically amended this section since the first adoption of the Guam Rules of Civil Procedure, the Compiler has included this Section as a substantive enactment superseding the Rules.

Former Guam CCP § 411 and § 412 (the next section) have been amended both by the Guam Legislature and by the California Legislature. With the amendment of 18 GCA § 7102 and § 7103 by P.L. 15-69, the difficulties encountered in this and the next section, due to the fact that they are incomplete, have been rectified.

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§ 14106. Summons by Publication.

(a) Where the person on whom service is to be made has departed from Guam, and cannot, after due diligence, be found in Guam, or conceals himself to avoid the service of summons, or is a corporation having no officer or other person upon whom service may be served, or who, after due diligence, cannot be found in Guam, and the fact appears by affidavit to the satisfaction of the court, or a judge thereof, and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action; or when it appears by such affidavit, or by the complaint on file, that it is an action which relates to, or the subject of which is real or personal property in Guam, in which such person defendant or corporation has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part in excluding such person or corporation from any interest therein, such court or judge may make an order that the service be made by the publication of the summons and by mailing the complaint and summons.

(b) Service by mail shall be by any kind of U.S. Postal Service delivery that provides for written proof of mailing, written proof of delivery and restricted delivery to the addressee only.

(c) The Guam Legislature intends the provisions of this 1997 Act to apply retroactively to confirm the power of the court to exercise jurisdiction over a nonresident defendant by authorizing service of process by mail and to validate any order made by the court before the effective date of this Act in which such service was authorized.

SOURCE: CCP § 412, amended by P.L. 13-131. Amended by P.L. 24-115:1.

COMMENT: See comment to the section above. Compare Rule 4 of the GRCP. For instance, there is no reference made in this Section, as amended by P.L. 13-131, to service of summons upon the government of Guam.

NOTE: CCP § 413, *Publication, Service by*, has been replaced by GRCP Rule 3e.

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§ 14107. Procedures for Several Defendants.

Where the actions is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

SOURCE: CCP § 414.

NOTE: CCP § 415, *Proof of Service*, how made, has been replaced by GRCP Rule 4(g).

§ 14108. When Jurisdiction of an Action is Acquired.

From the time of the service of the summons and of a copy of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. In all cases where a corporation has forfeited its charter of right to do business in the Territory of Guam, the persons who become the trustees of the corporation and of its stockholders or members may be sued in the corporate name of such corporation in like manner as if no forfeiture had occurred and from the time of service of the summons and of a copy of the complaint in the civil action, upon one of said trustees, or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of all said trustees, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and a copy of the complaint upon him.

SOURCE: CCP § 416.

§ 14109. Jurisdiction over Nonresident Defendants.

A court of this Territory may exercise jurisdiction on any basis not inconsistent with the Organic Act or the Constitution of the United States.

SOURCE: CCP § 417 added by P.L. 18-17:45 (10/5/85). Taken directly from Calif. CCP § 410.10.

COMMENT: @Section 410.10 (this section) permits California (Guam) courts to exercise judicial jurisdiction on any basis not inconsistent with the Constitution of California (Organic Act of Guam), Federal law or the United States Constitution. This authorization continues the California law of jurisdiction over foreign corporations and reestablishes the prior law that once governed nonresident individuals.@ *Judicial Council Comment to California CCP § 410.10* found in West, California CCP, 410.10 at page 459.

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Guam has made various attempts to create a long-arm statute and, as will be shown elsewhere in this Chapter, has adopted such a statute dealing with summons. However, this Section is necessary to deal with jurisdiction.

§ 14110. Jurisdiction over Nonresident Defendants in Cases Affecting Parent-Child Relationships.

In a suit affecting the parent-child relationship, the courts may exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this Territory, if:

1. the child was conceived in Guam and the person on whom service is required is a parent or an alleged or probable father of the child;
2. the child resides in Guam as a result of the acts or directives or with the approval of the person on whom service is required;
3. the person on whom service is required has resided with the child in Guam; or
4. notwithstanding items (1), (2), or (3) of this section, there is any basis consistent with the Organic Act or Constitution of the United States for the exercise of personal jurisdiction.

SOURCE: CCP § 418 added by P.L. 18-17:46 (10/5/85).
