

8 GCA CRIMINAL PROCEDURE
CH. 75 SUBPOENA; WITNESSES

CHAPTER 75
SUBPOENA; WITNESSES

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SUBPOENA

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§ 75.10. Subpoena for Witness; Forms; Issuance.

(a) A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceedings, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.

(b) The clerk shall issue a subpoena, signed and sealed but otherwise in blank to any party requesting it, who shall fill in the blanks before it is served.

NOTE: Section 75.10 is the same as former Rule 17(a). See also Fed. R. Crim. P. 17(a). Compare former §§ 1326 and 1327. See generally 8 Moore, Federal Practice ¶¶ 17.02-17.03 (1974).

§ 75.15. Subpoena for Indigent Defendant.

The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant and a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

NOTE: Section 75.15 is identical to former Rule 17(b). Compare § 95.85 (court-

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appointed expert witness). See also Fed. R. Crim. P. 17(b). See generally 8 Moore, Federal Practice ¶¶ 17.05; 28.02[1] (1974).

§ 75.20. Subpoena to Produce Evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence, and may upon their production permit the books, paper, documents or objects or portions thereof to be inspected by the parties and their attorneys.

NOTE: Section 75.20 is identical to former Rule 17(c). See also Fed. R. Crim. P. 17(c); former § 1327 (last paragraph). See generally 8 Moore, Federal Practice § 17.07 (1974).

§ 75.25. Subpoenas; Who May Serve.

A subpoena may be served by the marshal, by his deputy, by any peace officer of the Territory, or by any other person who is not a party and who is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for one (1) day's attendance and the mileage allowed by law.

SOURCE: Amended by P.L. 15-94:8, effective 01/17/80.

NOTE: Section 75.25 is substantively the same as the first two sentences of former Rule 17(d). See also Fed. R. Crim. P. 17(d). Compare former §§ 1328 and 1329. See generally 8 Moore, Federal Practice ¶ 17.04 (1974).

Public Law 15-94, § 8 amended this Section by adding, as a class of persons who may serve subpoenas, any peace officer of Guam. This amendment eliminates the problem of serving subpoenas in criminal cases and opens up a much larger source of manpower to serve subpoenas. It also eliminates the need of appointing persons as special deputies for the purpose of serving subpoenas. While, technically, peace officers came under the former except of "any other person who is not a party ..." their addition was to make sure that there can be no question about a policeman serving subpoenas. The amendment also makes a specific legislative direction to peace officers.

§ 75.30. Service Limits.

A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the territory of Guam.

NOTE: Section 75.30 is identical to former Rule 17(e).

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§ 75.35. Failure to Obey Subpoena.

Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena was issued.

NOTE: Section 75.35 is identical to former Rule 17(g). See also § 1331; Fed. R. Crim. P. 17(g). See generally 8 Moore, Federal Practice ¶17.10 (1974).

§ 75.40. Material Witnesses.

(a) If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the court may order him to be taken into custody and thereafter released in the manner and subject to the conditions provided by §§ 40.15 and 40.20. Such person shall be entitled to review of the release decision in the manner provided by §§ 40.50 and 40.80.

(b) No material witness shall be detained because of his inability to comply with any condition of release, if his testimony can be adequately secured by deposition, and further detention it is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken.

NOTE: Section 75.40 is based on former Rule 46(b) and § 3149 of Title 18 of the United States Code. It supersedes former §§ 878-882 and Subdivision (b) of former Rule 46. See also former § 1332. For provisions relating to depositions, see §§ 70.50-70.80.

§ 75.45. Grand Jury Subpoenas.

(a) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the Attorney General, or, upon request of the grand jury, by any judge of the Superior Court, in support of the prosecution, for those witnesses whose testimony, in his opinion, is material in an investigation before the grand jury, and for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

(b) Failure of any person to obey a grand jury subpoena, or to comply with the requirements thereof, or to obey a lawful order of the foreman of the grand jury, shall be deemed a contempt of court.

SOURCE: Added by P.L. 15-94:9, effective 01/17/80.

NOTE: New § 75.45 was added to fill a statutory gap of long standing. It has been assumed that the Attorney General has the power to issue subpoenas, or rather request the clerk of the court to issue subpoenas for witnesses before the grand jury. This

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Section cleans up the administrative process by permitting the Attorney General to issue and sign all subpoenas for grand juries. Likewise, the foreman of the grand jury may request subpoenas, but which subpoenas would be signed by a judge of the Superior Court.

ARTICLE 2
WITNESSES

- § 75.50. Who are Competent Witnesses.
- § 75.55. Husband and Wife as Competent Witnesses; When.
- § 75.60. Defendant as Witness.
- § 75.70. Discharge of Defendant to be a Witness.
- § 75.80. Sex Offense Case, Attendance of Supporting Persons of Prosecuting Witness 17 years of age or Under.
- § 75.85. Child Witness Comfort, and Protection.

§ 75.50. Who are Competent Witnesses.

Except as otherwise provided in this Title, the rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings.

NOTE: Section 75.50 is substantively the same as former § 1321. See also Cal. Pen. Code § 1321.

COURT DECISIONS: "There is no basis for engrafting a subsequent California constitutional change imposed by California's Voters onto Guam common law." [Issue of whether Guam law required an interpreter unless such was expressly waived by the Defendant.] *People v. Nuguid*, Crim. Case No. 89-00073A, D.C. Guam, App.Div., 10/12/93.

§ 75.55. Husband and Wife as Competent Witnesses; When.

Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties; except with the consent of both, or in case of criminal actions or proceedings for a crime committed by one against the person or property of the other, or in cases of criminal actions or proceedings charging an offense under 9 GCA Chapter 28, Article 1 (commencing with § 28.10), 9 GCA § 31.10 or § 31.45.

COURT DECISIONS: DISTRICT COURT, APP. DIV. 1978. "Where there is a substantial showing by the defendant that the impeaching statement [made by another witness] offered by the government was obtained by police threats and other blatant

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forms of physical and mental duress ... the court has a duty to conduct its own inquiry and to execute the statement if found to have been unconstitutionally coerced." *People v. Palomo*. D.C. Guam, App. Div., Cr. App. #76-09A. Decided 03/13/78.

NOTE: Section 75.55 replaces former §§ 266(g) and 1322. Compare Cal. Evid. Code §§ 970-973, 980-987. See Guam Rules of Evidence (6 GCA) for possible amendment (by implication) to this Section.

§ 75.60. Defendant as Witness.

A defendant in a criminal action or proceeding cannot be compelled to be a witness against himself but if he offers himself as a witness he may be cross-examined by the prosecuting attorney and the attorney for any codefendant as to all matters about which he was examined in chief. His neglect or refusal to be a witness cannot in any manner prejudice him nor be used against him at the trial or proceeding by the prosecuting attorney.

NOTE: Section 75.60 is based on former § 1323. Compare Cal. Const. Art. I, § 13, Cal. Evid. Code §§ 413, 761, 773, 930 and 940. See also § 1.11 (d), (e). It should be noted that where there are co-defendants, an attorney for the codefendant may cross-examine. Moreover, the codefendant (although not the prosecuting attorney) may comment on a failure of the other codefendant to take the stand. See *DeLuna v. United States*, 308 F.2d 140 (5th Cir. 1962), rehearing denied 324 F.2d 375 (1963) (discussed at length in 8 Moore, Federal Practice ¶14.04[3] (1974). The prejudice arising from such comment is obvious and is accordingly cause for severance for trial.

§ 75.70. Discharge of Defendant to be a Witness.

(a) When two (2) or more defendants are included in the same indictment, information or complaint, the court may, at any time before the defendants have gone into their defense, on the application of the prosecuting attorney, direct any defendant to be discharged, that he may be a witness for the prosecution.

(b) The discharge provided for by Subsection (a) is a bar to another prosecution of the defendant discharged for the same offense.

NOTE: Section 75.70 continues the substance of former §§ 1099 and 1101. See also Cal. Pen. Code §§ 1099, 11.01. See generally B. Witkin, California Criminal Procedure Trial § 300 (1963, Supp. 1973). For orders compelling testimony after claim of self-incrimination, see § 1.21 and note thereto.

§ 75.80. Sex Offense Case, Attendance of Supporting Persons at Testimony of Prosecuting Witness 17 Years of Age or Under.

(a) Notwithstanding any other provision of law, a prosecuting witness 17 years of age or under a case involving violation of any sexual offense defined in Chapter 25 of Title 9, Guam Code Annotated, or a violation of § 31.30 of said title shall be entitled for support to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the Grand Jury proceeding, preliminary hearing and at the trial, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand although the other person may remain in the courtroom during the witness' testimony. The support persons shall not make notes during the hearing or proceeding. In the case of a Grand Jury proceeding, the prosecuting attorney shall inform the support person or persons that Grand Jury proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings.

(b) If the person or persons so chosen are also prosecuting witness, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In all cases, the judge shall admonish the support person or persons to not prompt, sway or influence the minor witness in any way.

For purposes of this section, members of a prosecuting witness' family shall include the prosecuting witness' parents, legal guardian, grandparents, uncles, aunts or siblings.

SOURCE: Added by P.L. 20-209:2.

§ 75.85. Child Witness Comfort, and Protection.

Notwithstanding any other provision of law, at any criminal proceeding in which a minor under the age of 18 is a prosecuting witness, the court shall take special precautions to provide for the comfort and support of the minor and to protect the minor from coercion, intimidation or undue influence as a witness.

SOURCE: P.L. 20-209:3.
