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**CH. 34 NOTICES, ORDERS, PROCEDURE, APPEALS, FORMS**

**CHAPTER 34**  
**NOTICES, ORDERS, PROCEDURE, APPEALS, FORMS**

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**§ 3401. Mode of Setting for Hearing and of Giving Notice.**

(a)(1) Upon the filing of the following petitions:

(A) A petition for the probate of a will and for the grant of letters testamentary or of letters of administration with the will annexed, filed under the provisions of Section 1515 of this Title;

(B) A petition for letters of administration, filed under the provisions of Section 1813 of this Title;

(C) A petition for the revocation of letters of administration and for the grant of letters of administration to a person with prior right thereto, filed under the provisions of Section 2107 of this Title; and

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(D) A petition to set aside an estate of under \$20,000.00 in value to the surviving spouse or to the minor child or children of the decedent, filed under the provisions of Section 3115(a) of this Title without there having been any other petition filed, the Clerk of the Superior Court of Guam shall set the same for hearing by the Superior Court of Guam upon some date not fewer than twenty (20) nor more than thirty (30) calendar days after the date of filing. Such notice shall contain, but shall not be limited to, the name of the estate, the name of the petitioner and the nature of the petition (referring to the petition for further particulars,) and shall state the time and place at which the petition will be heard.

(2) Notice of the hearings referred to in subsection (a)(1) of this Section shall be given by the petitioner, by posting a copy of the notice of such hearing in the office of the municipal commissioner in the municipality in which the decedent resided at the time of his death, which copy shall be so posted at least fifteen (15) calendar days prior to the date set for such hearing, and by publishing notice of such hearing in a daily newspaper of general circulation in the territory of Guam for three (3) consecutive days, the last of which publications shall be not more than ten (10) calendar days prior to the date set for such hearing. The notice of the hearing appearing in a daily newspaper of general circulation shall be printed in a typeface no smaller than eight (8) points.

(3) Notice of the hearings referred to in subsection (a)(1) of this Section shall also be given by the petitioner in the manner provided in subsection (b) of this Section, to the extent the provisions of subsection (b)(1) of this Section are applicable.

(b)(1) Upon the filing of any petition, application or paper as to which it is provided in this Title that notice shall be given as provided in this Section, the Clerk of the Superior Court of Guam shall set the same for hearing by the Superior Court of Guam and notice thereof shall be given by the petitioner, applicant or moving party to the following:

- (A) The personal representative if he is not the petitioner;
- (B) Any co-personal representative not petitioning;

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(C) Each person named as an heir, devisee or legatee of the decedent in the petition for probate of will and for the grant of letters testamentary or of letters of administration with the will annexed, or in the petition for letters of administration, as the case may be;

(D) Each person (or his attorney, if he has appeared by attorney) who has requested special notice as provided in Section 3403 of this Title;

(E) Each person (or his attorney, if he has appeared by attorney) who has given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor; and

(F) Any other person to whom the Superior Court of Guam shall order that notice be given.

(2) The notice required by subsection (b)(1) of this Section shall either be served personally upon the persons mentioned in subsections (b)(1)(A) through (b)(1)(F), inclusive, of this Section, or sent to such persons by registered mail, addressed to them at their respective mailing addresses given in their requests for special notice, if any, otherwise to their respective offices or places of residence. Such notice shall be given at least seven (7) calendar days prior to the time set for the hearing to which the notice refers.

(3) The notice required by subsection (b)(1) of this Section shall contain, but shall not be limited to, the name of the estate, the name of the petitioner, applicant or moving party, the nature of the petition, application or paper (referring to the petition, application or paper for further particulars,) and shall state the time and place at which the petition, application or other paper will be heard.

(c) Proof of the giving of notice, as provided in this Section, must be made at the hearing; and if it appears to the satisfaction of the Superior Court of Guam that said notice has been regularly given, the Superior Court of Guam shall so find in its order, and such order, when it becomes final, shall be conclusive upon all persons.

(d) In all cases in which notice is required and no time for such notice is prescribed in this Title, and in all cases in which a hearing is required by the Superior Court of Guam acting upon its own motion, the Clerk of the Superior Court of Guam shall set the same for hearing by the

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Superior Court of Guam and notice thereof shall be given as provided by the order of the Superior Court of Guam.

**SOURCE:** Guam Law Revision Commission. Subsection (a)(2) of § 3401 was amended by P.L. 18-36:1.

**COMMENT:** The Commission has extensively revised the provisions concerning notice from those contained in the Probate Code of Guam (1970). The prior provisions were very cumbersome; moreover, they provided in most cases for the posting of notices on public bulletin boards, a procedure which the Commission believes is no longer necessary in light of the publication of daily newspapers in Guam. Under the revised notice scheme of § 3401, notice of the initial proceedings in probate cases will be given by posting (in the office of the decedent's municipal commissioner only) and by publication. Thereafter, notice will be given (personally or by registered mail) only to those persons who are known to be interested in the probate proceedings -- e.g., heirs, devisees, legatees, creditors, those who have entered appearances and those requesting special notice. Also see 1 GCA § 717 for further provision as to what constitutes "registered mail."

**§ 3403. Requests for Special Notice.**

At any time after letters have issued to the personal representative, any person interested in the estate, whether as heir, devisee, legatee, creditor, beneficiary under a trust, or as otherwise interested, or the Treasurer of Guam, may, in person or by attorney, serve upon the personal representative or trustee, or upon the attorney for the personal representative or for the trustee, and file with the Clerk of the Superior Court of Guam, with a written admission or proof of such service, a written request stating that he desires special notice of the filing or any or all of the petitions, applications, or other papers filed in the probate proceedings, and giving the post office address of the person making the same, or of his attorney. Thereafter such person shall be entitled to notice as provided in subsection (b) of Section 3401 of this Title.

**SOURCE:** Probate Code of Guam (1970), § 1202; Guam Law Revision Commission.

**§ 3405. Special Notice, United States Agencies.**

When compensation, pension, insurance or other allowance is made or awarded by the United States government, or a department or bureau thereof, to estates of decedents, the department or bureau making or awarding such compensation, pension, insurance or allowance, shall have the same right as any person interested in the estate to request notice of proceedings, to commence and prosecute actions on the bonds of personal representatives or in light of other security provided by

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personal representatives for the faithful performance of their trusts, and to file exceptions in writing to accounts of personal representatives and to contest the same.

**SOURCE:** Probate Code of Guam (1970), § 1203; Guam Law Revision Commission.

**§ 3407. Additional Notice.**

Whenever the Superior Court of Guam deems that the notice which has been given for any proceeding or hearing is insufficient, it may require such further and additional notice to be given as it deems proper.

**SOURCE:** Probate Code of Guam (1970), § 1204.

**§ 3409. Postponement.**

The Superior Court of Guam may continue or postpone any hearing or other proceeding, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing or other proceeding is required unless ordered by the Superior Court of Guam.

**SOURCE:** Probate Code of Guam (1970), § 1205.

**§ 3411. Personal Notice by Citation.**

When personal notice is required, and no mode of giving it is prescribed by this Title, it shall be given by citation. The citation must be directed to the person to be cited, signed by the Clerk of the Superior Court of Guam, issued under seal of the Superior Court of Guam, and must contain the title of the proceeding, a brief statement of the nature of the proceeding, and a direction that the person cited appear at a time and place specified.

**SOURCE:** Probate Code of Guam (1970), § 1206.

**§ 3413. Issue and Service of Citation.**

The citation referred to in Section 3411 of this Title may be issued by the Clerk of the Superior Court of Guam upon the application of any party, without an order of the Superior Court of Guam, except in cases in which such order is expressly required by law. The citation shall be served in the same manner as a summons in a civil action, and when no other time is specifically prescribed by law, it must be served at least five (5) calendar days before the return day thereof.

**SOURCE:** Probate Code of Guam (1970), § 1207.

**§ 3415. Service on Resident Guardian; Powers and Duties of Guardians.**

Whenever a minor or an insane or incompetent person has a guardian of his estate residing in the territory of Guam, personal service upon the guardian of any process, notice or order of the Superior Court of Guam, concerning the estate of a deceased person in which the ward is interested, is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice or order to show cause which an adult person of sound mind might waive.

**SOURCE:** Probate Code of Guam (1970), § 1208.

**§ 3417. Number of Publications.**

When any publication is ordered by the Superior Court of Guam, such publications must be made daily, or otherwise as often during the prescribed period as the newspaper is regularly issued, unless otherwise provided by this Title. The Superior Court of Guam may, however, order a lesser number of publications during the period.

**SOURCE:** Probate Code of Guam (1970), § 1209.

**§ 3419. Jurisdictional Facts Unnecessary in Orders.**

Orders and decrees made by the Superior Court of Guam in probate proceedings need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the Superior Court of Guam may depend, but it is only necessary that they contain the matters ordered or adjudged, except as otherwise provided by this Title.

**SOURCE:** Probate Code of Guam (1970), § 1220.

**§ 3421. Recordation of Orders Relating to Real Property.**

When an order is made setting apart a homestead, confirming a sale or making distribution of real property, or determining any other matter affecting the title to real property, a certified copy thereof shall be recorded in the Department of Land Management of the Government of Guam; and from the time of filing the same for record, notice is imparted to all persons of the contents thereof.

**SOURCE:** Probate Code of Guam (1970), § 1222.

**§ 3423. Rules of Trial and Other Probate Proceedings.**

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All issues of fact joined in probate proceedings must be tried in conformity with the rules of practice in civil actions. The party affirming is plaintiff, and the one denying or avoiding is defendant. The Superior Court of Guam shall try the issues joined, and sign and file its decision in writing, as provided in civil actions. Judgment on the issue joined, as well as for costs, may be entered and enforced by execution or otherwise by the Superior Court of Guam, as in civil actions.

**SOURCE:** Probate Code of Guam (1970), § 1230.

**§ 3425. Motion for New Trial.**

A motion for a new trial in probate proceedings can be made only in cases of contests of wills, either before or after probate, in proceedings to determine heirship and interests in estates, and in those cases where the issues of fact, of which a new trial is sought, were of such character as to entitle the parties to have them tried by the Superior Court of Guam whether or not they were so tried.

**SOURCE:** Probate Code of Guam (1970), § 1231.

**§ 3427. Costs: Discretion to Order Payment by Parties or From Estate.**

When not otherwise prescribed by this Title, either the Superior Court of Guam or the court on appeal may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require.

**SOURCE:** Probate Code of Guam (1970), § 1233; Guam Law Revision Commission.

**§ 3429. Applicability of Title 7, Guam Code Annotated (Civil Procedure).**

Except as otherwise provided in this Title, the provisions of Title 7 Guam Code Annotated commencing with Chapter 11 and the Guam Rules of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this Title with regard to trials, new trials, appeals, records on appeal, and all other matters of procedure.

**SOURCE:** Probate Code of Guam (1970), § 1233.

**COMMENT:** (1993) The original Title 15 referred to *Part II of the Code of Civil Procedure*. The Code of Civil Procedure has been codified as Title 7 of the Guam Code Annotated and, pursuant to its terms, the Guam Rules of Civil Procedure have been adopted, replacing much of the Code dealing with *procedure*. Therefore, the

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Compiler has changed the reference to the former Code of Civil Procedure to refer to the same law as was in existence at the time this section was first adopted.

**§ 3431. Official Forms in Appendix Minimally Acceptable; Judicial Council May Alter, Delete or Add Forms; Effective Date of Alterations, Deletions or Additions.**

The official forms contained in Appendix "A" to this Title may be used in any proceeding in which they are applicable, and when so used shall be accepted as adequate by the Superior Court of Guam, provided that all information required by law shall have been properly entered thereon and that the said forms shall have been properly executed as required by law. The Judicial Council of Guam may in its discretion alter the official forms contained in Appendix "A" to this Title, delete therefrom one or more of the said forms, or add thereto additional official forms. Any such alteration, deletion or addition shall become operative upon proper promulgation by the Judicial Council of Guam and compilation and printing by the Office of the Compiler of Laws; provided, that any such alteration, deletion or addition which purports to affect substantive rights under the law shall be void.

**SOURCE:** Guam Law Revision Commission.

**COMMENT:** The Commission is of the opinion that some official forms are useful and necessary for the smooth operation of the Superior Court of Guam in its handling of probate cases; moreover, the Commission believes that the inclusion of such official forms in this Title will be of assistance to personal representatives and their attorneys in their own handling of the estates they represent. It should be noted, however, that the use of the official forms contained in Appendix "A" is not required; if the forms are used (assuming that all required information is included and that the forms are properly executed,) the court is required to accept them as the minimal forms which may be filed in the proceedings to which they respectively apply, but nothing contained in § 3431 is intended to bar personal representatives or their attorneys, or other persons filing papers in probate proceedings, from using other forms if they so desire.

The Commission also believes that changing circumstances may mitigate toward the alteration or deletion of the official forms, or the addition of new ones; the power to alter, delete or add forms has thus been granted to the Judicial Council, with the further provision that such alterations, deletions or additions become effective only after proper promulgation by the Council and compilation and printing by the Office of the Compiler of Laws. The last clause of § 3431 is intended to indicate that only procedural alterations, deletions or additions in or to the official forms are to be valid; that is, it is not the Commission's intention to grant power to the Judicial Council to affect people's substantive rights under the law.

**§ 3433. Appealable Orders.**

An appeal may be taken to the Supreme Court of Guam from an order of the Superior Court of Guam granting or revoking letters testamentary, letters of administration with the will annexed or letters of administration; admitting a will to probate or revoking the probate thereof; setting aside an estate claimed not to exceed \$20,000.00 in value; setting apart property as a homestead or claimed to be exempt from execution; confirming a report of an appraiser or appraisers in setting apart a homestead; granting or modifying a family allowance; directing or authorizing the sale or conveyance or confirming the sale of property; settling an account of an executor, administrator with the will annexed, administrator, special administrator or trustee, or instructing or appointing a trustee; directing or allowing the payment of a debt, claim, legacy, commission or attorney's fee; determining heirship or the persons to whom distribution should be made or trust property should pass; distributing property; refusing to make any order heretofore mentioned in this Section; fixing an inheritance tax or determining that none is due; or made in the circumstances mentioned in Section 721 of this Title.

**SOURCE:** Probate Code of Guam (1970), § 1240; Guam Law Revision Commission.

**COMMENT:** The Commission has added the last clause, to cause § 3433 to comport with the applicable provisions of Chapter 7, *supra*.

(1993) See 7 GCA Chapters 1-9 (P.L. 21-147) for the creation and effective dates for the commencement of the Supreme Court of Guam and the consequent disestablishment of the appellate functions of the District Court of Guam.

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