

FILED

2010 JUL 23 AM 9:47

SUPREME COURT OF GUAM

IN THE SUPREME COURT OF GUAM

RE:) Supreme Court Case No. PRM06-006
)
)
 ADOPTION OF LOCAL RULE 7.1)
 of the LOCAL RULES OF PRACTICE) PROMULGATION ORDER NO. **RECEIVED**
 for the SUPERIOR COURT OF GUAM.) PRM06-006-12

GUAM BAR ASSOCIATION
 Office of the Executive Director
 Guam Judicial Center, Second Floor
 120 W. O'Brien Drive
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 Date: 7/23/10 Time: 1:32p
 By: McDonald

After consultation with the Standing Committee on Criminal Justice Automation appointed by the Chief Justice of Guam, and also with Senior Attorney Jeanne Miller, Counsel for the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of Justice, this Court has found it to be in the best interests of justice to promulgate a new Rule setting forth the procedures for handling the Relief from Disabilities pursuant to the terms of Congress's NICS Amendment Improvement Act of January 2008 ("NIAA"), which required that all states and territories allow persons with mental disabilities to petition for relief from their prohibiting data on file with NICS. This is known as the NIAA Section 5 requirement that jurisdictions all have a "Relief from Disabilities Program," allowing relief from the firearms disability imposed by federal law by virtue of his mental defect pursuant to, 18 U.S.C. § 922. A compliant Relief from Disabilities Program must contain the following components:

1. Established by statute, administrative regulation or order pursuant to local law.
2. Must allow a person who has been formally adjudicated as suffering from a mental disease or defect to petition for relief from Federal firearms prohibitions imposed under 18 U.S.C. § 922(d)(4) and (g)(4).

- 1 3. A court, board, commission or other lawful authority must consider the applicant's
2 petition for relief.
- 3 4. The petition for relief must be in accordance with principles of due process, i.e. (1)
4 opportunity to submit evidence (2) an independent decisions maker, other than the
5 individual who gathered the evidence for the application – shall review the evidence (3) a
6 record of the matter must be created and maintained for review.
- 7 5. The lawful authority must receive and consider a proper record, which includes (a) the
8 circumstances regarding the firearm disability; (b) the applicant's record, including at a
9 minimum, applicant's mental Health and criminal history records; and (c) applicant's
10 reputation developed, at a minimum, through character witness statements, testimony or
11 other character evidence.
- 12 6. The lawful authority issues proper findings, that (1) the applicant will not be likely to act
13 in a manner dangerous to public safety and (2) granting relief from disability will not be
14 contrary to public interest (must have *both*).
- 15 7. The procedure must permit de novo judicial review consistent with the following
16 principles: (a) applicant may petition a court to review a denial (b) the reviewing court
17 may but is not required to give deference to the decision of the lawful authority to deny
18 the application; and (c) in cases of a denial other than from a court decision, the
19 reviewing court must have discretion to receive additional evidence necessary to conduct
20 a review.

21 Under the authority of 48 USC §1424-1(a)(3) and (4), and 7 GCA § 3107, new
22 Miscellaneous Rule 7.1 was drafted, proposed and circulated to members of the Bar on June 27,
23 2010. Notice of a hearing on the Proposed Rule was on the Proposed Rules was circulated via
24 the Guam Bar Association website on that day. Comment was solicited from all members of the
25 bench and bar. Invitation for comment was made at the regularly scheduled Judicial Council
26 meeting of July 15, 2010. No comments were presented.

27 Proposed Miscellaneous Rule 7.1 was submitted to the Supreme Court of Guam for
28 hearing on their Promulgation on July 16, 2010. At the hearing on July 16, 2010, an opportunity
for comment was extended. After due consideration, Miscellaneous Rule 7.1 of the Local Rules
of Practice for the Superior Court of Guam is hereby adopted:

1
2 **RELIEF FROM DISABILITIES COURT RULE: Miscellaneous Rule 7.1:**

3 1. A person who has been formally adjudicated as ineligible pursuant to 18 U.S.C. §
4 922(g)(4) as defined in 27 C.F.R. § 478.11, may petition to the Superior Court of Guam
5 for relief from the 18 U.S.C. § 922(g)(4) Federal firearms prohibitions.

6 2. The Superior Court of Guam must consider the applicant's petition for relief.

7 (a) In the case of a civil commitment, the Superior Court of Guam shall accept
8 for filing in the Special Proceedings case in which the person was found to have a
9 mental defect, without cost, a Petition for Relief from § 922(g)(4) Disabilities.

10 (b) In the case of a criminal defendant who has put his mental state at issue, the
11 Superior Court of Guam shall accept for filing in the underlying criminal case or
12 cases in which the criminal defendant put his mental state at issue and a finding of
13 defective mental state was found, without cost, a Petition for Relief from §
14 922(g)(4) Disabilities.

15 3. The court shall accord the petitioner all due process of law, including:

16 (a) Petitioner shall have an opportunity to submit evidence.

17 (b) Petitioner shall have the opportunity for a Judge of the Superior Court to
18 review the evidence.

19 (c) Petitioner shall have a right to a record to be made of the matter, which shall
20 be maintained for review.

21 4. (a) The court must receive and consider a proper record of how the mental
22 disability was imposed in the first place, which will be contained in the record of
23 the case in which the disability arose.

24 (b) This must include but is not limited to (i) the circumstances regarding the
25 firearm disability; (ii) the Petitioner's record, including at a minimum, applicant's
26 mental Health and criminal history records; and (iii) Petitioner's reputation, which
27 may be developed on the record, at a minimum, through character witness
28 statements, testimony, or other character evidence.

5. If, at the conclusion of the consideration of the evidence noted above, the court makes the
following findings, that

(a) the applicant will not be likely to act in a manner dangerous to public safety,
and

1 (b) granting relief from disability will not be contrary to public interest, the court
2 must grant relief.

3
4 6. The Petitioner is entitled to *de novo* judicial review consistent with the following
5 principles:


6 (a) applicant may petition the Supreme Court of Guam to review a denial

7 (b) the Supreme Court of Guam may but is not required to give deference to the
8 decision of the Superior Court in denying the application.

9 Therefore, pursuant to the authority to “make and promulgate rules governing the
10 administration of the judiciary and the practice and procedure in the courts of the judicial branch
11 of Guam,” 48 U.S.C. § 1424-1(a)(6), the Supreme Court hereby enacts Miscellaneous Rule 7.1
12 of the Rules of Court for the Superior Court of Guam.

13
14 **SO ORDERED**, this 23rd day of July, 2010.

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18 **F. PHILIP CARBULLIDO**
19 Associate Justice

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17 _____
18 **KATHERINE A. MARAMAN**
19 Associate Justice

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21 
22 _____
23 **ROBERT J. TORRES**
24 Chief Justice

25
26 I do hereby certify that the foregoing is a
27 full true and correct copy of the original on
28 file in the office of the clerk of the
Supreme Court of Guam

JUL 23 2010

By: LISA C. IBANEZ
Deputy Clerk, Supreme Court of Guam