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IN THE SUPREME COURT OF GUAM

RE:)	Supreme Court Case No. PRM06-006
)	
AMENDMENTS TO THE GUAM)	
RULES OF CIVIL PROCEDURE AND)	PROMULGATION ORDER
LOCAL RULES OF THE SUPERIOR)	NO. 06-006-24
COURT FOR CIVIL PROCEEDINGS)	
)	
)	
)	

Throughout 2022, the Subcommittee on Rules of Civil Procedure convened to discuss possible amendments to the Guam Rules of Civil Procedure (“GRCP”) and Local Rules of the Superior Court of Guam. The Subcommittee is chaired by Chief Justice Robert J. Torres and co-chaired by Judge Arthur R. Barcinas, Judge Elyze M. Iriarte, and Judge Dana A. Gutierrez. Subcommittee members include attorneys from the Judiciary of Guam, the Office of the Attorney General, and private practitioner attorneys.

The Subcommittee has proposed amendments to several existing rules: GRCP 4, 6, 47, 48, 55, and 56, as well as amendments to Judiciary of Guam Forms 1, 2A, and 2B. On December 12, 2022, all above rules and forms were sent to the Guam Bar Association for comment, with the comment period set to expire on January 16, 2023.

Upon the recommendation of the Subcommittee and under the authority to “make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the Judicial branch of Guam,” 48 U.S.C. § 1424-1(a)(6), the Supreme Court hereby adopts amendments to the Guam Rules of Civil Procedure, specifically to Rules 4, 6, 47, 48, 55,



Guam Rule of Civil Procedure 4

Rule 4. Summons.

(a) *Contents; Amendments.*

(1) Contents. A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) Amendments. The court may permit a summons to be amended.

(b) *Issuance.* On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, must be issued for each defendant to be served.

(c) *Service.*

(1) *In General.* A summons must be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed by Rule 4(m) and must furnish the person effecting service with the necessary copies of the summons and complaint.

(2) *By Whom.* Any person who is at least 18 years old and is not a party may serve a summons and complaint.

(3) *By a Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may order that service be effected by a marshal, deputy marshal, or other person or officer specially

appointed by the court for that purpose. The court must so order if the plaintiff is authorized to proceed in forma pauperis.

(d) *Waiving Service.*

(1) Requesting a Waiver. An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing, and be addressed:

(i) to the defendant, if an individual, or;

(ii) for a defendant subject to service under Rule 4(h), to an officer or managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint and provide the defendant with an extra copy of the notice and request, as well as a prepaid means for returning the form;

(D) inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent, or at least 60 days if sent to a defendant outside Guam, to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) Failure to Waive. If a defendant located within Guam or any other jurisdiction of the United States, its territories, commonwealths, and possessions fails, without good cause, to comply with a request for waiver made by a plaintiff located within Guam, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a waiver so requested need not serve an answer to the complaint until 60 days after the request was sent, or until 90 days after it was sent to a defendant addressed outside Guam.

(4) Results of Filing a Waiver. When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) *Serving an Individual Within Guam or other Jurisdictions of the United States.* Unless otherwise provided by law, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in Guam or in any other jurisdiction of the United States, its territories, commonwealths, and possessions:

(1) in any manner prescribed or authorized by any law of Guam, or as prescribed by the law of the place where the person is served; or

(2) by doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with some person of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) *Serving an Individual in a Foreign Country.* Unless federal or Guam law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions:

(1) by any internationally agreed means of service reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means of service, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request;
or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) *Serving a Minor or an Incompetent Person.* A minor or an incompetent person in Guam, or in a jurisdiction of the United States or its territories, commonwealths, and possessions, must be served in the manner prescribed by the laws of such jurisdiction for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the jurisdiction where service is made. A minor or an incompetent person who is not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) *Serving a Corporation, Partnership, or Association.* Unless otherwise provided by Guam law or unless the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute and the statute so requires, by also mailing a copy of each to the defendant; or

(2) at a place not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery as provided in Rule 4(f)(2)(C)(i).

(i) *Serving the Government of Guam and Its Agencies, Corporations, Officers, or Employees.*

(1) Government of Guam. To serve the government of Guam, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the Attorney General or to an assistant attorney general or clerical employee whom the Attorney General designates in a writing filed by the clerk of court, or

(ii) send a copy of the summons and of the complaint by registered or certified mail addressed to the Office of the Attorney General;

(B) if the action challenges the validity of an order of a nonparty agency or officer of the government of Guam, send a copy of the summons and of the complaint by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve an agency or corporation of the government of Guam, or an officer or employee of the government of Guam sued only in an official capacity, a party must serve the government of Guam in the manner prescribed by Rule 4(i)(1) and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) Officer or Employee Sued Individually. To serve an officer or employee of the government of Guam sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the government of Guam (whether or not the officer or employee is also sued in an official capacity), a party must serve the government of Guam in the manner prescribed by Rule 4(i)(1) and also serve the officer or employee in the manner prescribed by Rule 4(e), (f), or (g).

(4) Extending Time. The court must allow a party a reasonable time to cure its failure to:

(A) serve all persons required to be served in an action governed by Rule 4(i)(2), if the party has served the Attorney General of Guam; or

(B) serve the government of Guam under Rule 4(i)(3), if the party has served an officer or employee of the government of Guam sued in an individual capacity.

(j) *Serving a Foreign, State, or Local Government.*

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality thereof must be served in accordance with 28 U.S.C. § 1608.

(2) State or Local Government. A state, territory, commonwealth, municipal corporation, or any other governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving the summons and complaint in the manner prescribed by the law of that state, territory, or commonwealth for serving a summons or like process on such a defendant.

(k) *Territorial Limits of Effective Service.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant who could be subjected to the jurisdiction of the courts of Guam, and all process may be served when not prohibited by law beyond the territorial limits of Guam.

(l) *Proving Service.*

(1) Affidavit Required. Unless service is waived, proof of service must be made to the court. Except for service by a marshal or deputy marshal, proof of service must be made by the server's affidavit.

(2) Service Outside the United States. Service not within Guam or any other jurisdiction of the United States, its territories, commonwealths, or possessions must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) Validity of Service; Amending Proof. Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) *Time Limit for Service.* If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own initiative after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

(n) *Asserting Jurisdiction over Property or Assets.*

(1) If a statute of Guam so provides, the court may assert jurisdiction over property. Notice to claimants of the property must be given as provided by the statute or by serving a summons under this rule.

(2) On a showing that personal jurisdiction over a defendant cannot be obtained in Guam by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over any of the defendant's assets found within Guam. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by the law of Guam.

(o) *Summons-Service By Publication Upon Party Not Inhabitant of, or Found Within Guam.* Whenever a statute or order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of a summons by publication upon a party not an inhabitant of, or found within Guam, service must be made by publication in a newspaper of general circulation, including publication only in its official online edition, for a period of time prescribed by the court and by mailing such summons, notice, or order to the last known residence (or post office box) of such party. Where a residence address and a post office box are known, service must be made on both. Publications must be proved by affidavit of an officer or agent of the publisher, stating the dates of publication with an attached copy of the order as published. Service by mail must be accomplished by any form of U.S. postal delivery that provides for written proof of mailing, written proof of delivery and restricted delivery to the addressee only. Mailing must be

proved by an affidavit establishing that the address employed is the most current mailing address known for the party being served, that a copy of the summons (notice or order) and the complaint were deposited with the U.S. Post Office, properly addressed, and having attached thereto the postal receipts reflecting a form of mailing prescribed above.

SOURCE: FRCP 4 (2021)

Guam Rule of Civil Procedure 6

Rule 6. Time.

(a) *Computing Time.* The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period States in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if it is a Saturday, a Sunday, a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the Superior Court inaccessible, the period continues to run until the end of the next day which is not one of the aforementioned days.

(D) As used in this rule and in Rule 77(c), “legal holiday” includes all holidays defined by 1 GCA § 1000(a) and (b), and any other holiday appointed as a holiday by the President or Congress of the United States, by the laws of Guam, or by the Governor of Guam.

(2)-(6) [Omitted]

(b) *Extending Time.*

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made before the original time or its extension expires; or

(B) on motion made after the time has expired if the failure to act was the result of excusable neglect.

(2) Exceptions. A court must not extend the time to act under Rules 50(b) and (c)(2), 52(b), 59(b), (d), and (e), and 60(b).-

(c) *Motions, Notices of Hearing, and Affidavits.*

(1) In general. A written motion and notice of the hearing thereof must be served not later than 7 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard ex parte;

(B) when these rules set a different time; or

(C) when a court order—which a party may, for good cause, apply for ex parte—sets a different time.

(2) Supporting Affidavit. Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, opposing affidavits must be served at least one (1) day before the hearing, unless the court permits service at another time.

(d) *Additional Time After Certain Kinds of Service.* When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(B), (C), or (D), 3 days are added after the period would otherwise expire under Rule 6(a).

SOURCE: FRCP 6 (2021)

Guam Rule of Civil Procedure 47

Rule 47. Selecting Jurors.

(a) *Examining Jurors.* The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

(b) *Peremptory Challenges.* The court shall allow the number of peremptory challenges provided by 7 GCA § 22120.

(c) *Excusing a Juror.* During a trial or deliberation, the court may excuse a juror for good cause.

SOURCE: FRCP 47 (2021)

Guam Rule of Civil Procedure 48

Rule 48. Number of Jurors; Verdict

(a) *Number of Jurors.* A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).

(b) *Verdict.* Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) *Polling.* After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

SOURCE: FRCP 48 (2021)

Guam Rule of Civil Procedure 55

GRCP 55. Default; Default Judgment.

(a) *Entering a Default.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) *Entering a Default Judgment.*

(1) By the Clerk. If the plaintiff's claim is for a sum certain or for a sum which can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit of the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for failure to appear and is neither a minor or incompetent person.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom a default judgment is sought has appeared personally or by a representative, the party or its representative must be served with written notice of the application for judgment at least 7 days prior to the hearing on such application. The court may conduct hearings or make referrals—preserving any statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) *Setting Aside a Default or a Default Judgment.* The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) *Plaintiffs, Counterclaimants, Cross-Claimants.* The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) *Judgment Against the Government of Guam.* A default judgment may be entered against the Government of Guam or an officer or agency thereof only if the claimant establishes a claim or right to relief by evidence satisfactory to the court.

SOURCE: FRCP 55 (2021)

Person Filing:
Address:
City, State, Zip Code:
Telephone:
Email Address:
Lawyer's Bar Number: Representing Self, without a Lawyer or Attorney for
Plaintiff OR Defendant

IN THE SUPERIOR COURT OF GUAM

SUPERIOR COURT CASE NO. _____

Plaintiff(s),

vs.

Defendant(s).

SUMMONS

WARNING: This is an official document from the court that affects your rights. Read this carefully. If you do not understand it, contact a lawyer for help.

To: (Defendant's name and address)

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers are served on you with this "Summons."
2. If you do not want a judgment or order taken against you without your input, you must file an "Answer" or a "Response" in writing with the court, and pay the filing fee. If you do not file an "Answer" or "Response" the other party may be given the relief requested in his/her Petition or Complaint. To file your "Answer" or "Response" take, or send, the "Answer" or "Response" to the:
 - Office of the Clerk of the Superior Court of Guam
120 West O'Brien Drive
Hagåtña, Guam 96910-5174
 - OR by electronic filing by sending to: efilecivil@guamcourts.org (or as modified by the Clerk of Court)
3. Deliver or mail a copy of your "Response" or "Answer" to the other party at the address listed on the top of this Summons.
4. If this "Summons" and the other court papers were served on you by a registered process server or a Marshal, within Guam or other Jurisdictions of the United States, your "Response" or "Answer" must be filed within TWENTY (20) CALENDAR DAYS from the date you were served, not counting the day you were served,

Case Number: _____

except when a different time is prescribed by order of the court. Service by a registered process server or a Marshal is complete when made.

5. You can get a copy of the court papers filed in this case from the Plaintiff/Petitioner at the address listed at the top of the preceding page, from the Clerk of the Superior Court's Record's Section.
6. Requests for reasonable accommodation for persons with disabilities must be made to the Judiciary's ADA Coordinator at least ten (10) calendar days in advance of a scheduled proceeding.

ADA Coordinator

Phone: (671) 475-3375

E-mail: ada@guamcourts.gov

(or as modified by the Clerk of Court)

7. Requests for an interpreter for persons with limited English proficiency must be made to the Language Access Manager by the party needing the interpreter and/or translator or his/her counsel at least ten (10) calendar days in advance of a scheduled court proceeding.

Language Access Manager

Phone: (671) 475-3299

E-mail: dwelle@guamcourts.gov

(or as modified by the Clerk of Court)

SOPHIA SANTOS DIAZ

Clerk of Court

Dated: _____

By: _____

Deputy Clerk

FORM NO. 2A

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

To: *(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)*

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return signed waiver within days (*give at least 30 days, or at least 60 days if the defendant is outside of Guam*) from the date shown below, which is the date this notice was sent. Two copies of the waiver form enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the Court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this Notice is sent (see date below) to answer the complaint (or 90 days if this notice is sent to you outside Guam).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

Printed name

Address

E-mail address

Telephone number

FORM NO. 2B

WAIVER OF SERVICE OF SUMMONS

TO: (name of plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity that I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity that I represent, must file and serve an answer or motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside Guam). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date

Signature

Printed Name of Defendant Waiving Service

Address

E-mail Address

Telephone Number

To be printed on reverse side of the waiver form or set forth at the foot of the form:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Guam Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in Guam and who fails to return a signed waiver of service requested by a plaintiff located in Guam will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant’s property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to absence of a summons or service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.