

GUAM CODE ANNOTATED

TITLE 7

**CIVIL PROCEDURE
AND
JUDICIARY**

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CHAPTER 1
GENERAL PROVISIONS

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§ 1101. Name of Title.

Title 7 of the Guam Code Annotated shall be known as *Judiciary and Civil Procedure*, shall consist of those portions of Title 7 enacted as positive law, together with the remainder of the Guam Code of Civil Procedure which has not been amended or repealed by either this Act or by the Rules of Court as authorized by § 66 and § 123 of said Code of Civil Procedure, as amended, prior to adoption of this Act.

SOURCE: Chapters 1 through 10 of this Title 7 were enacted by P.L. 21-147 in January of 1993, Therefore, through these first ten Chapters, the source references will be to this Public Law, unless otherwise noted.

COMMENT: Chapters 1 through 10 were first drafted in 1985 as a result of amendments to the Organic Act of Guam authorizing the Legislature to create a Supreme Court of Guam. See 48 U.S.C.A. § 1424-1 through § 1424-4. The comments and notes which follow were in the original draft and were before the Legislature at various times during the consideration of this Bill. The Compiler is aware that the actual bill as introduced to the Legislature did not contain these Comments during the 21st Guam legislature, but the commented version was available to the Committee chairperson. A number of additions and changes were made to the original bill before enactment in its present form. These will be noted where possible.

This law was drafted in the form of amendments to Title 7 of the Guam Code Annotated because the creation of a Supreme Court of Guam required the complete

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revision of the law relating to the courts of Guam to make as smooth and comprehensive enactment as possible.

Section 1101 is not only the “name” of this Title, but also clears up the status of the former Code of Civil Procedure and makes clear exactly what it consists of. It puts the Legislative stamp of approval on Rule 89 of the Guam Rules of Civil Procedure, which state which sections of the former Code of Civil Procedure have been superseded by the Rules of Civil Procedure.

NOTE: The preamble to P.L. 21-147 states:

WHEREAS, the people of Guam in their desire to obtain full self-government also wish their primary governmental institutions to be self-governing; and

WHEREAS, accordingly, Guam has sought since 1974 to establish its own judicial structure responsive to the people of Guam and similar to those of the several States of the Union; and

WHEREAS, Guam has now been authorized by Congress through the Omnibus Territories Act of 1984 to so establish such an independent judicial branch of its government; and

WHEREAS, the Guam legal system is fully developed with experienced judges and sound legal precedent, and the people of Guam have the fundamental democratic right to determine the appropriate procedures for reviewing decisions of the Superior Court of Guam, thereby rendering unnecessary and inappropriate the fifteen-year writ of certiorari review period provided to the Court of Appeals for the Ninth Circuit in 1424-2 of the Omnibus Territories Act of 1984 which interferes with accepted democratic principles; and

WHEREAS, the Guam Commonwealth Act as approved by the people of Guam in support of their exercise of self-government seeks for Guam nondiscriminatory, state-like treatment for its courts and the process by which decisions of the Supreme Court of Guam are reviewed, thereby eliminating any discriminatory review process; now, therefore,

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section. 1. Title. This Act may be cited as the “Frank G. Lujan Memorial Court Reorganization Act of 1992”

1985 SOURCE: § 1, Code of Civil Procedure (CCP); modified.

1985 COMMENT: This Section is derived from the first section of the former Code of Civil Procedure, but modified to conform with the structure of this Title within the Guam Code Annotated. Further, because most of the Code of Civil Procedure will not be touched by this enactment, it is continued in force, but such continuation is only for those portions that remain after amendment by this Act. Prior law (Court Reorganization Act of 1974 and before) (§ 66 and § 123 of the CCP) authorized procedural Court Rules for civil cases even if they are in conflict with the CCP. A new Evidence Code (6 GCA) was enacted by the 15th Guam Legislature, repealing former

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Civil Procedure Code sections dealing with evidence. By the enactment of 8 GCA, Criminal Procedure, the court was prohibited from enacting Rules of Criminal Procedure which were in conflict with any criminal procedure law on the same subject.

§ 1100.01. Legislative Intent.

I Liheslaturan Guåhan [the Legislature] intends herein to recognize and empower the Supreme Court of Guam as the highest Court of Guam with oversight over the Judicial Branch.

SOURCE: Added by P.L. 27-31:2.

NOTE: This section is a part of P.L. 27-31 which reorganizes the Guam Court system into one single organization headed by the Supreme Court.

§ 1102. Retroactivity; Court For Taking Appeal.

(a) No part of this Title is retroactive. No action or proceeding commenced before this Title takes effect and no right accrued are affected by its provisions, but the procedure therein must conform to the requirements of this Title as far as applicable.

(b) All court proceedings pending in any court of Guam, or in the Appellate Division of the District Court of Guam, shall continue to final judgment in such court. Appeals from decisions of the Superior Court of Guam (including from the Small Claims, Traffic and Family Divisions of the Superior Court) shall be taken to the Supreme Court of Guam and in the manner prescribed by the law affecting appeals in effect at the time the appeal is taken.

1985 SOURCE: (a) - CCP §§ 3 and 8. (b) - New.

1985 COMMENT: Since the Court Reorganization Act of 1984 creates a Supreme Court of Guam, and removes all jurisdiction from the Appellate Division of the District Court, it is necessary to state clearly what effect this law will have upon pending appeals and pending cases. The Omnibus Territories Act of 1984 states that the Supreme Court "must" take all appeals from lower local courts after it is created. Therefore, if an appeal is taken after the Supreme Court becomes ready for business, it must be taken to the Supreme Court, even if the date of judgment in the lower court was prior to the opening of the Supreme Court.

§ 1103. Effective dates.

(a) Delay. No provisions of this Act [Chapters 1 - 10 of this Title] except § 6112, § 6113, § 6114 and § 6117, shall take effect until May 1, 1993. [Sections] 6112, 6113, 6114 and 6117 shall take effect upon enactment of this Act.

(b) Organization. For purposes of adoption of rules and the establishment of a staffing pattern for the Judicial Branch, this Division, and

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the remaining portions of Title 7 enacted in this Act shall take effect on May 1, 1993.

(c) Appointment of Justices and Judges. For the purpose of the appointment of Justices and Judges, this Division shall go into effect upon approval by the Legislature of the Rules, as provided in paragraph (d), *infra*.

(d) Adoption of rules of court. Within thirty (30) days after May 1, 1993, the Presiding Judge of the Superior Court shall appoint a commission (the *Rules Commission*) to draft proposed new rules and procedures to govern the operation of the Judicial Branch as reorganized by this Act (*the Rules*). The Rules Commission shall consist of thirteen (13) members, of whom six (6) shall be sitting Judges of the Superior Court, four (4) shall be attorneys admitted to practice in Guam and members of the Guam Bar Association, and three (3) shall be lay persons who are residents of Guam, citizens of the United States, and of good reputation. At its first sitting, the Rules Commission shall elect a chairperson from among its members, and shall adopt a schedule of public hearings and meetings during which the Rules shall be considered and recommended for adoption. The Superior Court shall furnish personnel and other logistic support to the Rules Commission, which, in addition to the Rules, shall consider and make recommendations on the staffing pattern of the Judicial Branch as reorganized by this Act. When the Rules Commission has concluded its studies and has agreed upon the proposed Rules and staffing pattern, it shall submit the same to the Judicial Council, which shall in turn submit them to the Legislature, without any changes therein, although it may make recommendations to the Legislature thereon. The Rules Commission shall cease to exist thirty (30) days after its submission to the Judicial Council. The Legislature, without the forty-five-day limitation of the Administrative Law (the *AAL*), may, by statute, approve such Rules and staffing pattern or modify them as it deems fit. After the effective date of the Rules and staffing pattern, the Governor shall appoint the Justices and Judges authorized by this Act. Upon the due appointment and confirmation of such Justices and Judges, the Justices, sitting en banc, shall review the Rules and staffing pattern, and may approve or modify the same, which Rules and staffing pattern of the Supreme Court as so adopted by the Justices shall be deemed proposed rules and regulations adopted by an autonomous agency of the government of Guam pursuant to the Administrative Adjudication Law and shall therefore be transmitted to the Legislature which shall consider them in the manner and under the time limitations as set out in the Administrative Adjudication Law."

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(e) Hearing appeals. For purposes of hearing appeals and matters within the original jurisdiction of the Supreme Court of Guam, this Title shall take effect upon certification by the Chief Justice to the Governor, to the Judge of the District Court of Guam, and to the Legislature, that the Supreme Court of Guam is fully ready to accept the jurisdiction conferred upon it.

(f) Other matters. Any portions of this Act not dealing with matters covered by subsections (a), (b), (c), (d) or (e) of this § 1103 shall take effect at the same time as is provided in paragraph (e), *supra*.

SOURCE: Subsections (c) and (d) new with the 21st Guam legislature. Remainder of section was in original Bill. Subsection (d) amended by P.L. 23-34:3.

1995 NOTE: Subsection (d) was amended by *The Supreme Court of Guam Rules of Appellate Procedure Act*. This Act also adopted the Rules of Procedure for the Supreme Court, and, thereby, authorized the Governor to appoint justices to the court upon the Act's effective date. Section 2 of the Act stated:

Adoption of Rules and Appendices. The Rules of Appellate Procedure for the Supreme Court of Guam, as drafted and approved by the Supreme Court Rules Commission and the Judicial Council, are hereby approved by the Legislature, in their entirety, inclusive of the appendices, and shall take effect sixty (60) days after this Act goes into effect.

The Rules mentioned are contained in the Appendix to this Title 7.

1985 COMMENT: Since the Supreme Court Act of 1985 creates a Supreme Court, as it is authorized to do by the federal Omnibus Territories Bill of 1984, it is necessary to first create the court, appoint judges and staff, promulgate rules and only then, open it for business. Until the court is ready for business, the status quo should be maintained. There must not be any gap between the old and new court systems.

COMMENT: (1993) The 1992 Act established a Commission to first develop the rules for the Supreme Court, and its staffing pattern, and then authorized the Governor to appoint the first Justices.

§ 1104. Limitations.

When a limitation or period of time prescribed in any existing law for acquiring a right or barring a remedy, or for any other purpose, had begun to run before this Title goes into effect, the time of which has already run shall be deemed part of the time prescribed for such limitation by this Title.

1985 SOURCE: CCP § 9.

§ 1105. Judicial Remedies Defined.

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Judicial remedies are such as are administered by the courts of justice or by judicial officers empowered for that purpose by the Governor of Guam.

1985 SOURCE: CCP § 20.

§ 1106. Division of Actions.

Actions are of two kinds: civil actions and criminal actions.

§ 1107. One Form of Action.

There is one form of civil action to be called *civil action*. Civil actions may be divided by Rule of Court into such categories as are found necessary or convenient for the efficient administration of justice.

1985 SOURCE: Compare Rule 2 FRCP; § 21 CCP.

1985 COMMENT: This Section follows the pattern of the Federal Rules in creating only one form of action, named a “civil action”. All forms of civil action, as opposed to criminal actions, are so denominated with any special classification, such as “special proceedings” to be used as matters of convenience only. The Code of Civil Procedure substantively creates “actions” and “special proceedings”. This division is deemed unnecessary as a substantive matter.

§ 1108. Same: Obligations and Injuries.

A civil action arises out of either an obligation or an injury.

1985 SOURCE: CCP § 25, as modified grammatically but not substantively.

§ 1109. Obligation Defined.

An *obligation* is a legal duty by which one person is bound to do a certain thing and arises from a contract or by operation of law.

1985 SOURCE: CCP § 26, as modified grammatically but not substantively.

§ 1110. Division of Injury.

(a) An *injury* is either an injury to the person or to property.

(b) An injury to property consists of depriving its owner of the benefit of it which is done by taking, withholding, deteriorating or destroying it.

1985 SOURCE: CCP § 27 & § 28, modified grammatically only.

§ 1111. Injuries to the Person.

Every other injury is an injury to the person.

1985 SOURCE: CCP § 29.

§ 1112. Criminal Action.

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Title 9, Crimes and Corrections and Title 8, Criminal Procedure, both of the Guam Code Annotated, define and provide for the prosecution of criminal actions.

1985 SOURCE: CCP § 31, as modified to reflect the GCA.

§ 1113. Civil and Criminal Remedies Not Merged.

When the violation of a right admits of both civil and criminal remedy, the right to prosecute the one is not merged in the other.

1985 SOURCE: CCP § 32.

§ 1114. Civil Actions, By Whom Prosecuted.

A civil action is prosecuted by one party against another for the enforcement or protection of a right, or the redress or prevention of a wrong, except that the Governor or Legislature may bring an action pursuant to § 4104 of this Title in the Supreme Court of Guam for a determination of the law, as provided in § 4104.

1985 SOURCE: CCP § 30, as modified.

1985 COMMENT: This section reflects the right of the Governor and Legislature to seek opinions from the Supreme Court as provided in § 4104 of this Title.

§ 1115. Repealer.

[Sections] 1 through 203, inclusive, of the Code of Civil Procedure are repealed.

1985 SOURCE: New section - Repeals those parts of the former Code of Civil Procedure which are replaced by this Act.

COMMENT: The 1985 Bill contained a subsection (b) which was CCP § 18. This section repealed all laws inconsistent with this Title and provided that prior laws were not reenacted by implication. While the Compiler is unaware of the reason for deleting this sub-section, 1 GCA § 106 is almost identical and covers this Title now as it becomes a full part of the Guam Code Annotated.
