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Supreme Court of Guam, Clerk of Court

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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)	
LOCAL RULES OF THE SUPERIOR)	PROMULGATION ORDER
COURT FOR CIVIL PROCEEDINGS)	NO. 06-006-18
)	

In July 2021, the Subcommittee on Rules of Civil Procedure reconvened 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 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 local private practitioners.

The Subcommittee has proposed amendments to several existing rules: GRCP 6 and 56, Local Civil Rules (“CVR”) 7.1(j) and (k), Local General Rule (“GR”) 1.1(c), and Local Miscellaneous Rule (“MR”) 2.1.3(a)(1). The Subcommittee also proposed a new rule governing summary judgment motion practice, CVR 56.1, and two new Judiciary of Guam forms, CVR 7.1 FORM 4 and CVR 7.1 FORM 5, which aid litigants filing *ex parte* motions and/or motions to shorten time. On January 10, 2022, all above rules and forms were sent to the Guam Bar Association for public comment, with the comment period set to expire on February 10, 2022. On February 28, 2022, the Supreme Court of Guam held a virtual hearing on these proposed rules and

1 forms and heard testimony from Subcommittee member Danielle T. Rosete, Clerk of Court for the
2 Superior Court of Guam. The Supreme Court then took the matter under advisement.

3 Upon the recommendation of the Subcommittee and under the authority to “make and
4 promulgate rules governing the administration of the judiciary and the practice and procedure in
5 the courts of the Judicial branch of Guam,” 48 U.S.C. § 1424-1(a)(6), the Supreme Court hereby
6 adopts amendments to the Guam Rules of Civil Procedure, specifically to Rules 6¹ and 56; and
7 amendments to the Local Rules of the Superior Court of Guam, specifically to CVR 7.1(j) and (k),
8 GR 1.1(c), and MR 2.1.3(a). The Supreme Court also hereby adopts proposed new rule CVR 56.1.
9 Finally, the Supreme Court hereby adopts the following forms: (1) Application to Shorten Time;
10 Order, CVR 7.1 FORM 4, and (2) Application for *Ex Parte Relief*; Order, CVR 7.1 FORM 5. All
11 the above are attached as Exhibit A and are effective as of August 1, 2022.

12 These Rules and related forms, as amended and restated, shall apply to all actions, cases
13 and proceedings brought after the instant Promulgation Order takes effect and to all actions, cases
14 and proceedings to the effective date hereof and still pending, except to the extent that the
15 application of the amended Rules to those pending actions, cases and proceedings would not be
16 feasible, or would work injustice, in which event the prior Guam Rules of Civil Procedure and
17 Civil Rules, Miscellaneous Rules, and General Rules shall apply.

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28 ¹ This order repeals GRCP 6(c), “Shortening Time”, because this procedure is now governed by CVR 7.1
and the corresponding Form 4 and Form 5. Additional amendments to GRCP 6, regarding the computation of time,
remain under consideration by the Subcommittee.

Guam Rule of Civil Procedure 6

Rule 6. Time.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless 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, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), “legal holiday” includes New Year’s Day, Memorial Day, Independence Day, Liberation Day, Labor Day, Veterans’ Day, Thanksgiving Day, Christmas Day, 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.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) For Motions–Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as provided in Rule 59(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the court permits them to be served at some other time.

(d) Additional Time After Service By Mail under Rule 5(b)(2)(B), (C), or (D). Whenever a party has the right, or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(B)(2)(B), (C), of (D), 3 days shall be added to the prescribed period.

Guam Rule of Civil Procedure 56

Rule 56. Summary Judgment.

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition,

the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

(e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (4) issue any other appropriate order.

(f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

SOURCE: FRCP 56 (2021).

COMMENT:

Local Rule of the Superior Court of Guam Civil Rule 7.1

CVR 7.1. Motion Practice.

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(j) Applications for Orders Shortening Time.

(1) When it is necessary for a matter to be heard earlier than the time permitted or required by these Civil Rules of Court or the Guam Rules of Civil Procedure, the party who desires to shorten time shall file a separate application for an order shortening time using CVR 7.1 FORM 4 “Application to Shorten Time; Order.”

(2) Applications for an order to shorten time shall include the following information:

(A) The reasons why it is necessary to shorten time;

(B) That the opposing parties have been given notice of the application to shorten time, or if there is no opposing party, that all notices have been given as required by law; and

(C) Whether the opposing (or interested) parties agree to shorten time on the matter, or the reasons why an agreement on the application to shorten time could not be obtained.

(3) A separate CVR 7.1 Form 1 “Notice of Motion and Motion” is not required to accompany the CVR 7.1 Form 4 “Application to Shorten Time; Order.” However, a CVR 7.1 Form 1 “Notice of Motion and Motion” is required to accompany the motion on which the party desires time to be shortened.

(4) If the Court grants the application to shorten time and sets a shortened briefing schedule, such briefing schedule supersedes any schedule listed in the party’s CVR 7.1 FORM 1 “Notice of Motion and Motion.”

(5) When the application is made *ex parte*, the moving party shall file its application using the CVR 7.1 FORM 5 “Application for *Ex Parte* Relief; Order.”

(6) Pursuant to CVR 7.1(j)(2), if the party fails to provide either notice to the opposing/interested parties or sufficient justification for shortening time, the judge, in his or her discretion, may deny the application to shorten time and may schedule the underlying matter for a hearing as provided in these Civil Rules of Court or the Guam Rules of Civil Procedure.

(A) Applications for orders shortening time shall be granted or denied by the judge as soon as reasonably practicable under the circumstances.

(B) The judge need not hold a hearing on the application to shorten time.

(k) Ex Parte Applications.

(1) The following rules shall apply to all applications seeking *ex parte* relief based on the party's personal knowledge of a lawful basis for granting relief *ex parte*, not including Family Violence Orders of Protection, governed by Miscellaneous Rules 2.1 through 2.1.10, except where those Rules or any Civil Rules of Court explicitly provide otherwise.

(2) All applications for *ex parte* relief shall be in writing and shall be filed using a CVR 7.1 FORM 5 "Application for *Ex Parte* Relief; Order" which shall include, or attach, the following:

(A) The case caption and the relief requested.

(B) A memorandum in support of the underlying relief requested containing the points and authorities upon which the moving party relies, including citations.

(C) A statement regarding the reasons *ex parte* relief is necessary which explains that, for reasons specified, the applicant should not be required to inform the opposing party, or if there is no opposing party, that any other notice as required by law should be waived.

(D) A statement indicating whether or not the party believes it is necessary for the matter to be heard on an expedited basis or earlier than the regular time permitted or required by these Civil Rules of Court or the Guam Rules of Civil Procedure. If the party believes it is necessary for the matter to be heard on an expedited basis, the party shall state the reasons therefore.

(E) A proposed order granting the underlying relief requested. The proposed order shall bear the signature of the attorney presenting it preceded by the words, "presented by" on the left side of the last page.

(3) A separate CVR 7.1 Form 1 "Notice of Motion and Motion" is not required to accompany the CVR 7.1 Form 5 "Application for *Ex Parte* Relief; Order."

(4) All applications for *ex parte* relief shall be heard by the judge assigned to the case unless the judge is unavailable.

(A) Pursuant to CVR 7.1(k)(2)(iii), if the moving party fails to provide sufficient justification to support waiver of the notice to the opposing party, or if there is no opposing party, any other notice as required by law, the judge, in his or her discretion, may decline to hear the matter *ex parte*.

(B) If the judge declines to hear the matter *ex parte*, the Court may schedule the underlying matter for a hearing. In such case, the moving party shall serve the notice of hearing on the opposing party, or if there is no opposing party, shall provide any other notice as required by law.

(C) The judge, in his or her discretion, may decline to hear the matter on an expedited basis or earlier than the regular time permitted or required by these Civil Rules of Court or the Guam Rules of Civil Procedure. If the judge declines to hear the matter on an

expedited basis and has declined to hear the matter *ex parte*, the moving party shall serve the notice of hearing on the opposing party, or if there is no opposing party, shall provide any other notice as required by law.

Local Rule of the Superior Court of Guam Civil Rule 56.1

CVR 56.1. Summary Judgment.

(a) Motion. Any motion for summary judgment must include:

(1) a statement of the issues to be decided by the court; and

(2) a “Statement of Undisputed Material Facts” with references to supporting material in the record.

(b) Response. Any response to a motion for summary judgment must include:

(1) a statement of the issues to be decided by the court if the nonmovant is dissatisfied with the movant’s statement of the issues; and

(2) a response to the “Statement of Undisputed Material Facts,” which may include a statement of material facts that demonstrate the existence of a genuine factual dispute to be tried, with references to supporting material in the record.

SOURCE: E.D. Tex. Local Rule CV-56 (2021); D. Mass. Local Rule 56.1 (2021).

COMMENT:

Local Rule of the Superior Court of Guam General Rule 1.1

GR 1.1. Title; Effective Date; Scope.

...

(c) Scope of the Rules: Construction. These Rules supplement the Guam Rules of Civil Procedure and the Guam Rules of Criminal Procedure. These Rules shall be construed so as to be consistent with applicable statutes to promote the just, efficient and economical determination of every action and proceeding. The provisions of the General Rules and the provisions of Civil Rules 7.1 of the Local Rules of the Superior Court of Guam shall apply to all actions and proceedings, including civil, tax, and criminal, except where they may be inconsistent with rules or provisions of law specifically applicable thereto.

Local Rule of the Superior Court of Guam Miscellaneous Rule 2.1.3

MR 2.1.3. Hearings and Notice.

(a) Ex Parte Application for Temporary Order of Protection.

(1) An *ex parte* application for an Order of Protection shall be heard each day pursuant to these Rules. A declaration regarding notice to the Respondent is required only in cases where Respondent is represented by counsel. In cases where Respondent is represented by counsel, it shall be the duty of Petitioner's counsel to file a declaration containing the following:

(A) that a good faith effort has been made to advise counsel for all other parties, if known, of the date, time and substance of the proposed *ex parte* application or the reasons supporting the claim that notice should not be required, and

(B) the efforts to contact other counsel or the parties and whether any other counsel or party, after such advice, opposes the application or has requested to be present when the application is presented to the court, and if not filed in accordance with this rule, reasons why the *ex parte* application has not been timely filed.

Notice is not required to be served on a *pro se* Respondent if such notice would further endanger the safety and welfare of the Petitioner and/or minor child/ren. The Clerk of Court will transmit the petition for immediate review and hearing at such times designated by the Ex Parte judge, or any available judge should the Ex Parte judge not be available.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):

TELEPHONE NO.:

EMAIL ADDRESS:

ATTORNEY FOR (NAME):

IN THE SUPERIOR COURT OF GUAM

CASE NO. _____

Plaintiff(s)

v.

CVR 7.1 FORM 4

Defendant(s)

APPLICATION TO SHORTEN TIME; ORDER

1. I am applying to shorten time on the following motion, application, or requested relief:

2. Reason(s) necessary to shorten time:

3. Name of opposing parties (or attorneys), or if there are no opposing parties, the name of interested parties entitled to notice as required by law:

4. **NOTICE** (Note: If opposing/interested parties *HAVE NOT BEEN GIVEN NOTICE*, this CVR 7.1 FORM 4 is *NOT APPLICABLE*. You must use CVR 7.1 FORM 5 “APPLICATION FOR EX PARTE RELIEF”):

The opposing (or interested) parties were notified of the relief requested; and I hereby certify that I will notify the opposing (or interested) parties of the hearing date and time as scheduled by the Court.

Notice was given to: _____

Notification occurred on (date): _____ at (time) _____ .m.

Manner of notification: _____

5. **AGREEMENT OR OPPOSITION OF OPPOSING (OR INTERESTED) PARTIES :**

The opposing (or interested) parties agree to shorten time on the moving party’s (*insert name of motion, application, or requested relief listed in Section 1.*):

The opposing (or interested) parties oppose the application to shorten time for the following reasons:

The opposing (or interested) parties did not respond to notice of the application to shorten time or the parties have otherwise not discussed whether this application is opposed or unopposed.

I declare under penalty of perjury under the laws of Guam that the above information and all attachments are true and correct.

Date: _____ Signature: _____

Printed Name: _____

ORDER

Oral argument on the application to shorten time is set before the Court at the following date and time:

_____ at _____ .m.

Oppositions to the application to shorten time must be filed by _____ at

_____ .m.

Replies to any oppositions must be filed by _____ at _____ .m.

OR

The Court hereby: GRANTS DENIES the application to shorten time for the following reasons:

The hearing on the moving party's (*insert name of motion, application, or requested relief listed in Section 1.*):

_____ shall be held on _____ at _____ .m.

Oppositions to the _____ must be filed by _____ at _____ .m.

Replies to any oppositions must be filed by _____ at _____ .m.

SO ORDERED: _____

HONORABLE
Judge, Superior Court of Guam

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):

TELEPHONE NO.:

EMAIL ADDRESS:

ATTORNEY FOR (NAME):

IN THE SUPERIOR COURT OF GUAM

CASE NO. _____

Plaintiff(s)

v.

CVR 7.1 FORM 5

Defendant(s)

APPLICATION FOR *EX PARTE* RELIEF; ORDER

1. Type of relief requested:

2. Explain **in detail** the reason(s) *ex parte* relief is necessary (*e.g.*, notice of the application for *ex parte* relief would frustrate the purpose of the order sought, or applicant would suffer immediate and irreparable harm before the matter can be heard on notice):

NOTE: IF NOTICE HAS BEEN GIVEN TO OPPOSING OR INTERESTED PARTIES, THIS CVR 7.1 FORM 5 IS NOT APPLICABLE. SEE CVR 7.1 FORM 4 "APPLICATION TO SHORTEN TIME."

3. Name of opposing parties (or attorneys), or if there are no opposing parties, the name of interested parties entitled to notice as required by law:

4. MEMORANDUM OF POINTS AND AUTHORITIES:

I hereby certify that I have attached the Memorandum of Points and Authorities as required by CVR 7.1(k)(2)(ii).

5. PROPOSED ORDER:

I hereby certify that I have attached a proposed order granting the relief requested as required by CVR 7.1(k)(2)(v).

6. STATEMENT REGARDING EXPEDITED BASIS:

I believe it is necessary for this application for *ex parte* relief to be heard on an expedited basis or earlier than the regular time permitted or required by these Civil Rules of Court or the Guam Rules of Civil Procedure for the following reasons:

It is not necessary for this application for *ex parte* relief to be heard on an expedited basis or earlier than the regular time permitted or required by these Civil Rules or the Guam Rules of Civil Procedure.

I declare under penalty of perjury under the laws of Guam that the above information and all attachments are true and correct.

Date: _____

Signature: _____

Printed Name: _____

ORDER

The Court hereby: GRANTS DENIES the application to hear the matter *ex parte* for the following

reasons:

The Court hereby: GRANTS DENIES the request to hear the matter on an expedited basis for the following reasons:

The hearing on the matter shall be held on _____ at _____ .m.

SO ORDERED: _____

HONORABLE
Judge, Superior Court of Guam