

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 78-38

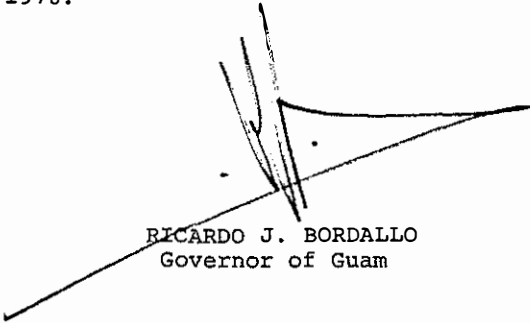
PROMULGATION OF THE RULES AND
REGULATIONS FOR USE IN CRIMINAL
FORFEITURE PROCEEDINGS

WHEREAS, the Department of Law has, on the 13th day of November, 1978, held a public meeting in accordance with the Administrative Adjudication Act, relative to the adoption of certain rules to employ in cases of forfeiture of an automobile, boat, or aircraft; and

WHEREAS, I have examined said rules and find them acceptable;

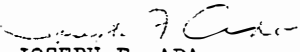
NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do hereby order the attached Rules and Regulations, which shall be effective immediately.

Signed and promulgated at Agana, Guam, this 21st day of NOVEMBER, 1978.



RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:



JOSEPH F. ADA
Acting Lieutenant Governor


OFFICE OF THE GOVERNOR
GOVERNMENT OF GUAM

RULES AND REGULATIONS
FOR
CRIMINAL FORFEITURE PROCEEDINGS

PURPOSE

To implement a consistent policy with regards to the forfeiture of automobiles, vessels, and aircraft pursuant to the Guam Criminal and Correctional Code.

APPROVED:



P. H. JACOBSEN
Attorney General, Acting
11-13-78

Date

TO ALL CONCERNED PARTIES

The Office of the Attorney General, Department of Law, Government of Guam will hold a public meeting on Monday November 13, 1978 at 2:30 P.M. with the object of enacting Rules and Regulations on Criminal Forfeiture Proceedings. This meeting will be held in the Conference Room at the Office of the Attorney General, 7th Floor of the PDJ Bldg. All interested parties are welcome to attend. A copy of the proposed Rules and Regulations is available for examination by any interested parties at the Attorney General's Office.

Section 1.01. Definitions.

As used in this part:

(a) The term "Attorney General" means the Attorney General of the Territory of Guam or his delegate.

(b) The term "related crime" means any crime similar in nature to that which gives rise to the seizure of property for forfeiture, for example, where property is seized for a violation of the Guam laws relating to narcotics, a "related crime" would be any previous offense involving a violation of the Federal laws relating to narcotics or the laws of any State or political subdivision thereof relating to narcotics.

(c) The terms "net equity", "net lien", and "net interest" mean the actual interest a petitioner has in property seized for forfeiture at the time a petition for remission or mitigation of forfeiture is granted by the Attorney General: Provided, however, that in determining actual interest the Attorney General shall make no allowances for unearned interest, finance charges, dealer's reserve, attorney's fees or other similar charges.

(d) The term "owner" means the person who holds primary and direct title to the property seized for forfeiture.

(e) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning property.

(f) The term "petition" means the petition for remission or mitigation of forfeiture.

(g) The term "petitioner" means the person applying for remission or mitigation of the forfeiture of seized property.

(h) The term "property" means property of any kind capable of being owned or possessed.

(i) The term "record" means an arrest followed by a conviction, except that a single arrest and conviction and the

expiration of any sentence imposed as a result of such conviction, all of which occurred more than 10 years prior to the date the petitioner acquired its interest in the seized property, shall not be considered a record: Provided, however, That two convictions shall always be considered a record regardless of when the convictions occurred: And provided further, That the Attorney General may, in his discretion, consider as constituting a record, an arrest or series of arrests to which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(j) The term "reputation" means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(k) The term "violation" means the person whose use of the property in violation of the law subjected such property to seizure for forfeiture.

Section 1.02. Procedure relating to judicial forfeitures.

(a) A petition for remission or mitigation of forfeiture shall be addressed to the Attorney General, and shall be sworn to by the petitioner, or by his counsel upon information and belief, and shall be submitted in triplicate to the Attorney General for the Territory of Guam.

(b) Upon receipt of such a petition for mitigation or remission, the Attorney General shall refer one copy of the petition to the administrator of the appropriate investigating agency, and a second copy to the Assistant Attorney General handling the forfeiture procedure. Each of these persons shall submit a report to the Attorney General, setting forth their recommendations with regard to the petition.

(c) Upon receipt of the recommendations of those persons receiving copies of the petition, but in any event within 30 days of receipt of the petition, the Attorney General shall rule on the petition. Failure of the Attorney General to act within 30 days shall constitute a denial of the petition. No hearing shall be held.

(d) Notice of the granting or denial of the petition shall be mailed to the petitioner or to his attorney. If the petition is granted in whole or in part, the conditions of relief and the procedures to be followed in order to obtain that relief shall be set forth.

(e) A request for reconsideration of a denial may be submitted to the Attorney General within 10 days of the denial. Such request must be based on evidence found or developed since the original petition was filed, and not considered in the denial. Only one request for reconsideration of a petition shall be considered.

Section 1.03.

(a) Petitions shall be sworn, and shall include the following information in clear and concise terms:

(1) A complete description of the property, including license numbers and serial numbers, and the date and place of seizure.

(2) The interest of the petitioner in the property, as owner, mortgagee, or otherwise, to be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence.

(3) The facts and circumstances, together with proof thereof, relied upon by the petitioner to justify remission or mitigation.

(b) The Attorney General shall not consider whether the evidence is sufficient to support the forfeiture, since the filing of a petition presumes a valid forfeiture. The Attorney General shall consider only whether the petitioner has satisfactorily established his good faith and his innocence and lack of knowledge of the violation which subjected the property to seizure and forfeiture, and whether there has been compliance with the standards hereinafter set forth.

(c) The Attorney General shall not remit or mitigate a forfeiture unless the petitioner:

(1) establishes a valid, good faith interest in the seized property as owner or otherwise; and

(2) establishes that he at no time had any knowledge or reason to believe that the property in which he claims an interest was being or would be used in a violation of the law; and

(3) establishes that he at no time had any knowledge or reason to believe that the person using the property in a violation of the law had any record or reputation for violating laws of the United States or of the Territory of Guam or of any state for related crime.

Section 1.04.

(a) Mitigation: In addition to his discretionary authority to grant relief by way of complete remission of forfeiture, the Attorney General may, in the exercise of his discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be

granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Attorney General, complete relief is not warranted. Mitigation may take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) Rival claimants: If the beneficial owner of property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, relief from a forfeiture shall be granted to the beneficial owner and the petition of the owner of the security interest shall be denied.

(c) Leasing agreements:

(1) A person engaging in the business of renting property shall not be excused from establishing compliance with the requirements of Section 1.03.

(2) A lessor who leases property on a long term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless his lessee would be entitled to such relief.

(d) Voluntary bailments: A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall be granted remission or mitigation of forfeiture upon meeting the requirements of Section 1.03.

(e) Straw purchase transactions: If a person purchases in his own name property for another who has a record or

reputation for related crimes, and if a lienholder knows or has reason to believe that the purchase of record is not the real purchaser, a petition filed by such a lienholder shall be denied unless the petitioner establishes compliance with the requirements of Section 1.03 as to both the purchaser of record and the real purchaser. This rule shall also apply where money is borrowed on the security of property held in the name of the purchaser of record for the real purchaser.

(f) Notwithstanding the fact that a petitioner has satisfactorily established compliance with the administrative conditions applicable to his particular situation, the Attorney General may deny relief if there are unusual circumstances present which in his judgment provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be inimical to the interests of justice.

Section 1.05. Terms and conditions of remission.

(a) The terms and conditions of remission or mitigation of forfeitures in cases subject to judicial forfeiture proceedings shall, at a minimum, require that a petitioner pay the costs and expenses incident to the seizure of the property including any court costs and accrued storage charges. However, if the petitioner's interest in the property is derived from a lien thereon, the petitioner shall pay an amount equal to all costs and expenses incident to the seizure including any court costs and accrued storage charges or the amount by which the appraised value of the property exceeds the petitioner's net interest therein, whichever is greater. The appraised

value at the time of seizure is used for the purposes of these rules.

(b) Where a complaint for forfeiture has been filed with the District Court, a lienholder shall also be required to furnish the Attorney General with: (1) An instrument executed by the registered owner and any other known claimant of an interest in the property, if they are not in default, releasing their interest in such property, or (2) if the registered owner or any other known claimant is in default, an agreement to save the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(c) Alternatively, a lienholder may elect to permit the litigation to proceed to judgment. In that event, the court shall be advised that the Attorney General has allowed the petition for remission of the forfeiture and shall be requested to order the property sold by the Government at public sale and the proceeds thereof to be distributed as follows:

(1) Payment to the petitioner of an amount equal to his net equity if the proceeds are sufficient or the net proceeds otherwise, after deducting from the petitioner's interest an amount equal to the Government's costs and expenses incident to the seizure, forfeiture and sale, including court costs and storage charges, if any;

(2) Payment of such costs and expenses;

(3) Payment of the balance remaining, if any, to the Government.

(d) The Attorney General may impose such other conditions

as may be appropriate.

(e) Upon compliance with the terms and conditions of remission or mitigation in cases subject to judicial forfeiture proceedings, the Attorney General shall take appropriate action to effect the release to the petitioner of the property involved and to dismiss the complaint if one has been filed or otherwise dispose of the matter by forfeiture, sale and distribution of the proceeds therefrom as set forth herein.

(f) In any case, if the owner of record or any other claimant wishes to contest the forfeiture, judicial condemnation of the property shall be consummated, the court shall be apprised of the granting and terms of the remission or mitigation by the Attorney General, and the court shall be requested to frame its decree of forfeiture accordingly.

(g) Where the owner of property elects not to comply with the conditions imposed upon the release of such property to said owner by way of relief, the custodian of such property may be authorized to sell it. From the proceeds of the sale the custodian shall deduct and retain for the account of the Government all costs incident to the seizure and forfeiture plus the costs of sale, and shall pay said owner the balance, if any.

(h) Where remission or mitigation is allowed to a person holding a security interest who is thereby eligible to have the property released to such person upon compliance with the terms and conditions of remission or mitigation, the property may nevertheless be retained by the Government for official use by an appropriately designated Department

or Agency thereof upon payment by it to such person of an amount equal to such person's net equity, less an amount equal to the Government's costs and expenses incident to the seizure and forfeiture including court costs and storage charges, if any, and upon payment by it to the Government of an amount equal to such costs and expenses.