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CHAPTER 12
ELECTION CONTESTS

NOTE: Unless otherwise noted, all sections within this chapter were included in the original Government Code of Guam enacted by P.L. 1-088 (Nov. 29, 1952), and repealed and reenacted by P.L. 7-164 (Aug. 28, 1964). During the Fifteenth Guam Legislature, the Compiler announced that Title 3 - Elections had been added to the new, permanent Guam Code Annotated. *See* 4 Guam Sess. L. Introduction (Mar. 1981).

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§ 12101. Contestant and Defendant Defined.

When used in this Chapter, contestant means any person initiating an election contest. Defendant means that person whose election or qualification is contested or those persons receiving an equal or higher number of votes, other than the contestant, when the body canvassing the

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returns declares that no one (1) person has received the highest number of votes for the contested office.

SOURCE: GC § 2600. Codified as 3 GCA § 12101. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12102. Causes for Contest.

Any voter of Guam in a general election, or of a municipality or precinct in a municipal election, may contest any election held therein for any of the following causes:

(a) that the person who has been declared elected to an office other than as a Member of *I Liheslaturan Guåhan* (the Guam Legislature) was not, at the time of the election, eligible to that office;

(b) that the precinct board or any member thereof was guilty of misconduct;

(c) that the defendant has given to any elector or precinct board member of the election, any bribe or reward or has offered any bribe or reward for the purpose of procuring his or her election, or has committed any other offense against the elective franchise of Guam;

(d) that illegal votes were cast;

(e) that the precinct board, in conducting the election or in counting the ballots, made errors sufficient to change the results of the election as to any person who has been declared elected; or

(f) that the Election Commission, in conducting the election or in canvassing the ballots, made errors sufficient to change the results of the election as to any person who has been declared elected.

SOURCE: GC § 2601. Amended by P.L. 11-209:28 (Dec. 22, 1972). Codified as 3 GCA § 12102. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12103. Irregularity or Misconduct Not Affecting Result.

No irregularity or improper conduct in the proceedings of any precinct board shall void an election result unless such irregularity or misconduct resulted in a defendant being declared either elected or tied for election.

SOURCE: GC § 2602. Codified as 3 GCA § 12103. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12104. Where Illegal Votes Not Necessary to Majority.

An election shall not be set aside on account of illegal votes unless the Commission determines that such number of illegal votes has been given to the person whose right to the office is contested or who has been certified as having tied for first place, which, if taken from the candidate, would reduce the number of his or her legal votes to below the number of votes given to another person for the same office.

SOURCE: GC § 2603. Codified as 3 GCA § 12104. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12105. Complaint by Contestant.

When a voter contests any election, he or she shall file with the Superior Court of Guam a written complaint, setting forth specifically:

- (a) the name of the contestant, and that he or she is a registered voter of a municipality or precinct of Guam, as the case may be, in which the contested election was held;
- (b) the name of the defendant;
- (c) the office;
- (d) the particular grounds of the contest; and
- (e) whether a demand for jury trial is requested.

SOURCE: GC § 2604. Codified as 3 GCA § 12105. Subsection (e) added by P.L. 25-146:70 (May 27, 2000). Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12106. Same: Verification.

The contestant shall verify the statement of contest and shall file it in the Superior Court of Guam within fifteen (15) days after the declaration of the result of the election by the body canvassing the returns thereof.

SOURCE: GC § 2605. Codified as 3 GCA § 12106. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12107. Allegation of Illegal Votes.

When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that in one (1) or more specific voting precinct votes were given to the defendant, which, if taken from him or her would reduce the number of his or her legal votes below the number of legal votes given to some other person for the same office.

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The Superior Court of Guam shall cause to be delivered to the defendant a copy of the complaint filed by the contestant.

SOURCE: GC § 2606. Codified as 3 GCA § 12107. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12108. Technical Errors in Allegations Disregarded.

A statement of the grounds of contest shall not be rejected, nor the proceedings dismissed by any court for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular ground or cause for which the election is contested.

SOURCE: GC § 2607. Codified as 3 GCA § 12108. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12109. Special Session.

Within five (5) days after the end of time allowed for filing statements of contest, the Superior Court of Guam shall thereupon order a special session to be held on some day to be declared by the Court, not less than ten (10) or more than twenty (20) days from the date of its order.

SOURCE: GC § 2608. Codified as 3 GCA § 12109. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12110. Citation to Defendant.

The Clerk of the Court shall thereupon issue a citation for the defendant to appear at the time and place specified in the order, which citation shall be delivered and served upon the parties at least five (5) days before the time so specified, either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the home address where he or she last resided.

SOURCE: GC § 2609. Codified as 3 GCA § 12110. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12111. Subpoena and Attachment.

The Clerk of the Court shall issue subpoenas for witnesses at the request of any party, which shall be served as are other subpoenas. The Superior Court may issue body attachments to compel the attendance of witnesses who have been subpoenaed to attend the Court.

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SOURCE: GC § 2610. Codified as 3 GCA § 12111. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12112. Trial.

The Superior Court of Guam shall meet at the time and place designated, to determine the contested election, and shall have all the powers necessary to the determination thereof. It may adjourn from day to day until the trial is ended, and may also continue the trial, before its commencement, for any time not exceeding twenty (20) days, for good cause shown by any party upon affidavit, unless the Court otherwise finds just cause to provide for additional time frames. Either party shall have the right to request for a jury trial of six (6) jurors either in the complaint or at their first appearance.

SOURCE: GC § 2611. Codified as 3 GCA § 12112. Amended by P.L. 25-146:71 (May 27, 2000). Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12113. Recount at Trial.

At the trial the ballots shall be opened and a recount taken, in the presence of all parties, of the votes cast for the various candidates in all contests where it appears from the statements filed that a recount is necessary for the proper determination of the contest.

The Superior Court may, where two (2) or more statements of contest are filed requiring a recount, join together the actions of the contestant for the purpose of recounting the votes.

SOURCE: GC § 2612. Codified as 3 GCA § 12113. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12114. Applicable Rules of Law and Evidence.

In the trial and determination of election contests, the Court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable. It may dismiss the proceedings if the statement of the cause of the contest is insufficient, or for want of prosecution.

The Guam Election Commission is authorized to void any already certified election results if it determines through its own investigation the need to certify anew upon recount, retabulation, or following an investigation of an election.

SOURCE: GC § 2613. Codified as 3 GCA § 12114. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12115. Findings and Conclusions: Judgment.

The Court shall continue in special session to hear and determine all issues arising in contested elections. After hearing the proofs and allegations of the parties, and within ten (10) days after the submission thereof, the Superior Court shall file its findings of fact and conclusions of law, and immediately thereafter shall announce judgment in the case, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

SOURCE: GC § 2614. Codified as 3 GCA § 12115. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12116. Declaration of Election by Court.

If in any election contest it appears that another person than the defendant has the highest number of legal votes, the Court shall declare that person elected.

SOURCE: GC § 2615. Codified as 3 GCA § 12116. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12117. Certificate of Election.

The person declared elected by the Superior Court is entitled to a certificate of election. If a certificate has not already been issued to him or her, the Commission shall immediately prepare and deliver to that person a certificate of election signed by the Court and authenticated with the seal of the Superior Court.

SOURCE: GC § 2616. Codified as 3 GCA § 12117. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12118. Annulment of Prior Certificate.

If the Commission has issued any certificate for the same office to any other person than the one declared elected by the Court, such certificate shall become annulled by the judgment of the Court.

SOURCE: GC § 2617. Codified as 3 GCA § 12118. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12119. Costs of Contest Proceedings.

If the proceedings under this Chapter are dismissed for insufficiency of evidence to support any of the bases for the claims, or for want of prosecution, or the election is confirmed by the Court without any claims

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proven, judgment may be rendered against the contestant, for costs and attorney's fees, in favor of the defendant. If the election is annulled or set aside, judgment for costs may be rendered against the defendant, in favor of the contestant.

SOURCE: GC § 2618. Codified as 3 GCA § 12119. Amended by P.L. 25-146:72 (May 27, 2000). Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12120. Apportionment of Costs of Contest.

Where two (2) or more contests are joined for the purpose of recounting votes as provided in this Chapter, the costs shall be apportioned among the parties at the discretion of the Court.

SOURCE: GC § 2619. Codified as 3 GCA § 12120. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12121. Appeal From Judgment.

Any party aggrieved by the judgment of the Superior Court of Guam may appeal therefrom to the Supreme Court of Guam, as in other cases of appeal thereto from the Superior Court, except on an expedited basis. During the pendency of proceedings on appeal, and until final determination thereof, the person declared elected by the Superior Court of Guam shall be entitled to the office in like manner as if no appeal had been taken. The Supreme Court of Guam shall provide an expedited appeal process for election contests.

SOURCE: GC § 2620. Amended by P.L. 12-085:38 (Jan. 16, 1974). Codified as 3 GCA § 12121. Amended by P.L. 25-146:73 (May 27, 2000). Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12122. Effect of Judgment Setting Aside Election.

Whenever an election is annulled or set aside by the judgment of the Superior Court, and no appeal has been taken within ten (10) days thereafter, the certification, if any has been issued, is void and the office is vacant.

SOURCE: GC § 2621. Codified as 3 GCA § 12122. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).

§ 12123. Determination of Tie.

If at any election, two (2) or more persons receive an equal number of votes which is the highest number of ballot votes cast for the same office, a judge of the Superior Court of Guam shall forthwith summon the candidates who received the votes to appear at a time to be designated by the judge. A

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judge of the Superior Court of Guam shall at that time and place determine the tie by lot; provided, that in case two (2) or more vacancies are to be filled, a tie need not be broken when both the tie nominees are elected to office.

SOURCE: GC § 2622. Codified as 3 GCA § 12123. Repealed and reenacted by P.L. 31-255:2 (Dec. 11, 2012).
