GUAM CODE ANNOTATED

TITLE 8

CRIMINAL PROCEDURE

UPDATED THROUGH P.L. 34-139
(DECEMBER 12, 2018)

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CRIMINAL PROCEDURE

SOURCE: Enacted by P.L. 13-186 (Sept. 2, 1976) as the Criminal Procedure Code of Guam. Codified in Title 8 Guam Code Annotated by P.L. 15-104:7 (Mar. 5, 1980) and amended as indicated herein.

2007 COMMENT: Prior to being placed in the Guam Code Annotated, criminal procedure statutes were published in 1977 in a hard-bound publication entitled "Criminal Procedure and P.L. 13-187" by the Compiler of Laws. The 1977 publication contained an introduction statement that explained the general intent of Criminal Procedure Code as it existed at the time. The 1977 introduction is included here in its entirety:

[1977] INTRODUCTION

The two laws contained in this Volume are, together with the Criminal and Correctional Code, a product of the Guam Law Revision Commission, which was established by P.L. 12-93. Public Law 13-187 is a law which amends the general laws of Guam to conform with the terminology and sentencing structure of the Criminal and Correctional Code and the Criminal Procedure Code. Most particularly, P.L. 13-187 brings the myriad of separate sentences found throughout the laws of Guam in no set pattern into conformity with the criminal classifications and sentences established by the new Codes.

The Criminal Procedure Code (P.L. 13-186) supersedes Part II of the Penal Code of Guam and existing, court-adopted, Rules of Criminal Procedure. The Law Revision Commission, having observed the interaction (and confusion) between Part II of the Penal Code and the Rules of Criminal Procedure, decided that all major criminal rules should be in statutory form. Thus, these Rules are intended to wholly supersede existing Rules of Criminal Procedure. It is for this reason that no "Rules of Criminal Procedure" adopted by the Court have been attached to this Volume. Those rules which the Court may adopt have not yet been adopted.

Even a cursory examination will reveal that the Criminal Procedure Code, as adopted, makes significant changes. Yet this Code is not designed to cause a revolution in Criminal Procedure, only rapid evolution. Special attention should be directed towards the areas of pre-trial release, grand jury proceedings, preliminary examinations, depositions and discovery. The purpose and effect of these changes is explained in the Notes following the pertinent sections. Most of the significant changes in substance are based upon comparable provisions in the more recent federal rules or legislation and on standards proposed by the American Bar Association Project on (Minimum) Standards for Criminal Justice.

The original comments and cross-references to sources of this and the other Codes in the series were prepared by the Executive Director of the Law Revision Commission before passage of the Codes. I have added, deleted and modified these comments and notes where necessary to reflect

the law as actually passed by the Legislature. It was the expressed desire of the Commission that such comments accompany the publication of these Codes.

The various penal sections of law occurring throughout the laws of Guam were enacted separately from each other and from the Penal Code. Thus, each act has tended to set its own penalties without reference to a general system of sentences. Public Law 13-187 amends these penalty sections, among others, to provide each crime with a penalty which conforms to the standard classification found in the Criminal and Correctional Code, namely felonies, felonies by degree, misdemeanor, petty misdemeanor and violation. Individual sentences have been eliminated. The Table of Contents for P.L. 13-187 reflects the section amended, the subject matter of the section and the *new penalty or other amendment, or repeal.*

CHARLES H. TROUTMAN
Compiler

Note to Annotations

In contrast to the Criminal and Correctional Code, this Code does not contain "Sources", "Cross-references" and "Comments." Unlike the Criminal & Correctional Code, the Criminal Procedure Code takes from sources which are already enacted as law or promulgated as court rules, either local court rules or the Federal Rules of Criminal Procedure. Thus, no new discussion of intent is needed in most cases. That is already available from the standard sources.

Therefore, following each Section of this Code will be a "Note" which will include any necessary commentary and the appropriate citation to the source and any cross-references. No comment or cross-referencing has been added to P.L. 13-187, as this part of the three laws is self-explanatory, amending the remainder of the Government Codes, Civil and Civil Procedure Codes to conform with the substantive revisions of the Criminal & Correctional Code and the Criminal Procedure Code.

ABBREVIATIONS USED

(1) Guam Penal Code is cited as "Guam PC § _____" ''G.P.C. § _____."

(2) Government Code of Guam is cited as "Govt. Code § _____."'

(3) Civil Code of Guam is cited as "Civ. Code § _____."

(4) 1970 Code of Criminal Procedure cited as "Code Crim. Proc. § _____."

(5) 1970 Code of Civil Procedure cited as "Code Civ. Proc. § _____."

(6) Criminal & Correctional Code of 1977 cited as "Crim. & Corr. Code § _____."

(7) Criminal Procedure Code of 1977 cited as "Crim. Proc. Code § _____, or "CPC §_____."

(8) American Law Institute, Model Penal Code (Proposed Official Draft 1962) cited as "M.P.C. § _____."

(9) California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project (Tentative Drafts ## 1, 2, & 3 dated Sept. 1967, June 1968 & July 1969) cited as "Cal. § _____ (T.D. (1, 2, or 3), 196_)."

(10) California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project (Staff Draft entitled "The Criminal Code," 1971) cited as "Cal. § _____(1971)."

(11) Massachusetts Criminal Law Revision Commission, Criminal Code of Mass. (Proposed 1972), cited as "Mass. ch. § _____."

(12) New Jersey Criminal Law Revision Commission, New Jersey Penal Code (Final Report, 1971) (two volumes) cited as "1 or 2 N.J. §_____."

TABLE OF CONTENTS

TITLE 8
CRIMINAL PROCEDURE

CHAPTER 1
GENERAL PROVISIONS

§ 1.01. Short Title.

This Title 8 of the Guam Code Annotated shall be known as Criminal Procedure.

COMMENT: This Title is adopted by P.L. 13-186 in order to minimize possible confusion with the Code of Civil Procedure when initials are used to refer to a particular code. P.L. 15-104:7 reenacted this Code as Title 8 of the Guam Code Annotated and changed its name to conform with the new title format.

§ 1.05. Severability Clause.

If any provision of this Code, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

COMMENT: Section 1.05 adds a severability clause to this Code and covers this Code plus all amendments thereto. While no such clause was placed in the former Penal Code, the courts have assumed its existence by case law.

§ 1.07. General Applicability; Court Rules.

(a) The provisions of this Code govern the practice and procedure in every criminal proceeding prosecuted in the name of the Territory. They are intended to provide for the just determination of every criminal proceeding and shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

(b) The Judicial Council may provide by rule for the practice and procedure in criminal proceedings only to the extent such rules are not inconsistent with the provisions of this Code. Subject to this limitation, the Judicial Council may prescribe rules in the manner provided by § 66 of the Code of Civil Procedure.

(c) If no procedure is provided by this Code or by rule, the court may proceed in any lawful manner not inconsistent with its own rules or with any applicable statute.

(d) Nothing in this Code shall be construed in any way to amend, repeal or affect the provisions of 19 GCA Chapter 5 (Family Court), or limit the jurisdiction of the Court in the administration and enforcement of that chapter.

COMMENT: The second sentence of § 1.07(a) is substantively the same as former Rule 2 and former Guam PC § 4. However, the remainder of the section completely reverses prior law. Formerly, non-substantive, statute. See former Code Civ. Proc. § 66 (P.L. 12-85, § 3). Now, the procedure in criminal cases is made statutory by this Code and the courts may not alter any rule contained in this Code. The changed approach is due to two factors. First, many matters of criminal procedure involve fundamental rights . bail, jury, types of pleas, arraignment, indictment; preliminary hearing, etc., . and it is believed that these matters should be fixed in law. Secondly, the issue of whether a matter is subject to the Criminal Procedure portion of the Penal Code or to court rule has been a SOURCE of confusion and litigation. Thus, the Committee believed that there should be only one SOURCE of major criminal rules . this Code.

NOTE: A Guam Supreme Court was created by P.L. 21-147. However, this section was not changed by that law, and the Supreme Court does not come into effect until after a number of statutory requirements have first been met. So, for criminal matters, this Chapter remains law, and the Rules promulgated by this Title must still be altered only by the Legislature.

§ 1.09. Traffic Court Rules to be Adopted by Judicial Council; De Novo Appeal allowed to Superior Court.

(a) Notwithstanding the provisions of § 1.07, the Judicial Council may, in its discretion, adopt such rules governing the procedure in the Traffic

Court, a division of the Superior Court, as it shall deem necessary to secure simplicity and uniformity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

(b) Such rules may be inconsistent or conflict with the procedures provided in this Code. However, the defendant in any proceeding before the Traffic Court shall have the right to appeal to the Superior Court and obtain a trial de novo in any case.

(c) Nothing in this Section or any rule promulgated pursuant thereto shall preclude the Attorney General from prosecuting any offense in the Superior Court prior to the entry of a plea of guilty or commencement of trial.

COMMENT: This Section continues the existing relationship between the Superior Court and its Traffic Court division.

§ 1.11. Rights of Defendant Enumerated.

In any criminal action, the defendant is entitled:

(a) To a speedy and public trial.

(b) To defend in person and with counsel. Every defendant accused of a crime who is financially unable to employ counsel shall be entitled to have counsel assigned at public expense to represent him at every stage of the proceedings from his initial appearance before the court through appeal, unless he waives such appointment.

(c) To be informed of the nature and cause of the accusation against him.

(d) To be exempt from being called to testify and from testifying against himself.

(e) To be allowed to testify in his own behalf; if he fails to testify, such failure shall not be construed as evidence against him; but if he does so testify, he may be cross-examined in the same manner as other witnesses.

(f) To have compulsory process issued for obtaining witnesses in his behalf.

(g) To produce witnesses on his behalf and to be confronted with the witnesses against him, in the presence of the court, except that:

(1) Hearsay evidence may be admitted to the extent that it is otherwise admissible in a criminal action under the law of this Territory.

(2) The deposition of a witness taken in the action may be read to the extent that is otherwise admissible under § 70.70.

(h) To appeal.

COURT DECISIONS: C.A.9 1969. The first nine Amendments of the U.S. Constitution are made directly applicable to the federal prosecutions in the territory, but only those which are mandated upon the states by the second sentence of the 14th Amendment of the U.S. Constitution are mandated upon Guam by incorporation in the Organic Act of the second sentence of the 14th Amendment of the U.S. Constitution. People v. Inglett, 417 F.2d 123 (1969).

D. C.Guam App. Div. 1979. The Prosecutor's reference to Defendant's silence is not in violation of the 5th Amendment of the U.S. Constitution if the reference is not intended to raise, nor does raise, in the jury's mind a negative inference or an inference of guilt of the Defendant. People v. Pador, D.C.Guam, App.Div., Cr. #50-A. Decided January 24, 1978.

D.C.Guam App.Div. 1981. The right of defendant Okada to a speedy trial [§ 1.11(a)] was violated when her trial date was postponed to allow the presiding judge to preside over this trial even though a trial date was opened before another court on the scheduled date and there was no reason to show why the trial should not be held on the scheduled date other than the preference of the presiding judge. People v. Okada, D.C.Guam App.Div.1980, Cr.App. #78-00041A; Government's appeal from decision dismissed by Ninth Circuit for lack of authority by the Government to appeal criminal cases to it, People v. Okada, C.A.9 1981, _____ F.2d _____. But Congress corrected the lack of power to appeal when it enacted 48 U.S.C.A. § 1493 in 1984.

D.C. GUAM APP. DIV. 1981. This case was remanded to the Superior Court to determine whether, because the counsel in the action was defending two defendants and where it is clear that the counsel emphasized the defense of one person and did not emphasize the defense of the other, this defendant was provided with ineffective counsel. People v. Gleason, D.C. App. Guam 1981, D.C. Cr.App. #79-00048A. [§ 1.11(b)]

D.C. GUAM APP. DIV. 1980. Where the appellate court conducts a full examination of the proceedings and decides that the case is wholly frivolous, the court may, and did here, grant the counsel's request to withdraw and to dismiss the appeal. People v. Palomo, D.C. App. Guam 1980, Cr.App. #79-00025A. [§ 1.11(b) and (h)]

SUPERIOR COURT 1981. The defendant's right to counsel does not extend to the time of arrest for drunk driving. People v. Eclavea, Sup. Ct. 1981, S.C. Cr. #647-80.

COMMENT: Section 1.11 continues the substance of former § 686. See also former Rule 44(a); Cal. Pen. Code § 686. § 1.11 is not intended to be exclusive, see, e.g., Code Civ. Proc. § 680.1(b) (right to jury trial), and is, of course, subject to any

constitutional requirements which may exist now or in the future. The Section is retained, however, as a useful catalogue of some of the defendant's more important rights.

Subsection (a). The substance of Subsection (a) is reflected in specific provisions which require expeditious handling of criminal proceedings. See, e.g., §§ 45.10 (first appearance); 45.50 (preliminary examination); 80.50-80.60 (trial). Former § 686(1) referred to an "oral" trial. There was no California counterpart, and certainly the provision did not prevent use of written evidence.

Subsection (b). Former § 686(2) provided that the defendant was "entitled to be allowed counsel as in civil actions, or to appear and defend in person and counsel." This was supplemented by former Rule 44(a) the substance of which is incorporated into (b). Implementation of the right to counsel is covered more specifically in this Code by § 45.30 and 45.40. It might be noted that the right to appointed counsel does not extend to a defendant accused of a violation.

Subsection (c). This right is implemented in § 45.30 (first appearance) and § 60.10 (arraignment).

Subsection (d) and (e). These provisions reflect rights protected by the 5th Amendment. See also § 75.60.

Subsection (f). This right is implemented by §§ 75.10, 75.15 (issuance of subpoena).

Subsection (g). This Subsection is restated in the form now provided by § 686(3) of the California Penal Code. Obviously, the substance of this "right" is now stated elsewhere. See, e.g., § 70.70 (use of deposition).

Subsection (h). This right is implemented by Chapter 130 commencing with § 130.10.

§ 1.13. Presence of Defendant: When Mandatory, Permissive.

(a) The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impanelling of the jury and return of the verdict, and at the imposition of sentence, except as otherwise provided by this Section.

(b) The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived his right to be present whenever he, initially present:

(1) Voluntarily absents himself after the trial has commenced (whether or not he has been informed by the court of his obligation to remain during the trial), or

(2) Engages in conduct which is such as to justify his being excluded from the courtroom.

(c) A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In a prosecution for an offense not a felony, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under § 120.46.

COMMENT: Section 1.13 is substantially the same as former Rule 43 and former § 1396. See also Fed. R. Crim. P. 43. See generally 8A Moore, Federal Practice ¶43.01-43.04 (1974). However, the section has been conformed to proposed revisions of the federal rule. Subsection (a) now includes a reference to all plea proceedings. See, e.g., § 60.80 (plea agreements). Subsection (b) makes clear that trial properly may be continued where the defendant engages in conduct justifying his exclusion from the courtroom. See, Moore, supra at 43-8 to 43-9 and footnotes. Similarly, Paragraph (3) of Subsection (c) is an additional clarifying change and makes no change in the law. See, Moore, supra ¶43.03[2].

§ 1.15. Indictments; When Required.

Any felony together with any related misdemeanor shall be prosecuted by indictment, or, if indictment is waived, or a preliminary hearing held and an order issued holding the defendant to answer under § 45.80 of this Code, it may be prosecuted by indictment or by information. Any other offense shall be prosecuted by complaint.

SOURCE: Amended by P.L. 15-94:1, effective 01/17/80.

COURT DECISIONS: C.A.9 The Elected Governor Act (48 U.S.C. § 1421b[u]) which extended the 5th Amendment of the U.S. Constitution to the territorial government of Guam, did not make grand jury indictments mandatory in the prosecution of "infamous crimes" by the territorial government. People v. Inglett 417 F.2d 123 (1969).

SUPER. CT. 1983 On Guam, § 1.15 of Title 8 is not unconstitutional because there is no generally-recognized right to a preliminary hearing once a grand jury has handed down an indictment showing probable cause against the defendant. California's contrary ruling is based solely upon an interpretation of the laws and constitution of California and, since § 1.15 is not taken from California, Guam declines to follow California in this regard. People v. McGravey, Cr. #100F-82; People v. Snyder, Cr. #126F-82.

COMMENT: § 1.15, as amended by P.L. 15-94, alters the procedure to be used in initiating the accusatory pleading. As before [Criminal Rule 7], an indictment is required for a felony if not waived by the defendant. However, under this Section as

amended, all related misdemeanors are treated along with the felony charges, i.e. prosecuted by indictment or by information. A substantial change requires that all misdemeanors be prosecuted by complaint, usually accompanied by the appropriate affidavit. See 8 GCA § 55.35. Joinder of Offenses; 8 GCA Chapter 45. First Appearance and Preliminary Examination.)

In cases of misdemeanors and lesser offenses, no indictment or information is generally required or permitted. Prosecution is by complaint. The only probable cause determination required in such cases is that made by the court when it issues a warrant or summons, or that made before the initial appearance. (See 8 GCA §§ 15.20, 15.30, and 45.20).

The amendment made by P.L. 15-94 permitted the original intent of the Law Revision Commission by adding the phrase "or a preliminary hearing held and an order issued holding the defendant to answer under § 45.80 of this Code, ..." Prior to this amendment, the Superior Court was requiring not only a preliminary hearing but an indictment following the preliminary hearing, thus requiring two probable cause hearings in felony cases. The Commission never intended this result and, therefore, the Legislature amended this Section to provide only one preliminary hearing on probable cause. Now, if a preliminary hearing has been held, an information may be filed. An indictment is no longer required in such instances.

§ 1.17. Preliminary Examination: When Required, Waived.

Unless a preliminary examination is waived by the defendant, an information may not be filed until there has been a preliminary examination of the case against the defendant and an order issued holding him to answer under § 45.80. The proceeding for a preliminary examination shall be commenced by a written complaint as provided by § 15.10 and § 45.20.

COMMENT: § 1.17 is based on § 738 of the California Penal Code. It makes clear that unless waived, a preliminary examination is prerequisite to the filing of an information. Contrast former Rule 7(a). See note to § 1.15.

§ 1.19. Conviction Only by Verdict, Finding or Plea.

No person may be convicted of an offense except by verdict of a jury, accepted and recorded by the court, by a finding of the court in a case where a jury has been waived or is not required or by a plea of guilty or nolo contendere.

COMMENT: § 1.19 is comparable to California Penal Code § 689. Compare former § 689 which failed to refer to a jury verdict and contained an obsolete reference to a judgment upon a demurrer.

§ 1.21. Granting of Immunity: Procedure.

(a) In any investigation or proceeding for any offense, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, the prosecuting attorney may, in writing, request the Superior Court to order that person to answer the question or produce the evidence. The court shall set a time for hearing and order the person to appear before the court and show cause, if any, why the question should not be answered or the evidence produced, and the court shall order the question answered or the evidence produced unless it finds that to do so would be clearly contrary to the public interest, or could subject the witness to a criminal prosecution in another jurisdiction.

(b) After complying, and if, but for this Section, the person would have been privileged to withhold the answer given or the evidence produced by him, no testimony or evidence provided under compulsion of the court order (or any information derived directly or indirectly therefrom) may be used against such witness in any criminal proceeding other that one for perjury.

(c) Notwithstanding Subsection (b), the person may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

SOURCE: Repealed and reenacted by P.L. 15-94:5, effective 01/17/80.

COMMENT: Section 1.21 is new; however, it is substantively similar to California Penal Code § 1324. The procedure is a useful one and its substance appears in the laws of most states. The California provision is believed to be based on the Model Witness Immunity Act. See discussion in California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project 103-108 (Tent. Draft 2, 1968). Cal. 505.

The amendment made by P.L. 15-94, § 5 changed the type of immunity granted from that practiced in California to that permitted by the Supreme Court, namely "use immunity". The difference is that, under the former section of the Code, a witness given immunity could not be prosecuted for the event or transaction upon which his testimony was based no matter whether the prosecutor developed independent evidence or not. Under "use immunity" the witness may be prosecuted for the events of about which he testifies if the prosecutor develops sufficient independent evidence of the event and the witnesses culpability wholly apart from his testimony of the events.

COURT DECISIONS: SUPERIOR COURT 1981. Immunity under this Section may not be given a witness whose testimony is sought for a civil proceeding even where the witness has claimed his right to silence under the 5th Amendment. § 1.21 of Title 8 (this Section) permits the prosecuting attorney to seek immunity "in any investigation or proceeding for any offense, ...". The proceeding before the Department of Administration to decertify the Guam Federation of Teachers and the Local 3 union

did not constitute a proceeding for any offense. In re testimony of Tomas Long, Sup. Ct. 1981, Special Proceedings #27-81.

§ 1.23. Photographs, Broadcasting in Courtroom Permitted.

The taking of photographs in the courtroom during the progress of judicial proceedings, or radio or television broadcasting of judicial proceedings from the courtroom, shall be permitted by the Court, subject to restrictions in rules and regulations promulgated by the Court.

SOURCE: Repealed/reenacted by P.L. 25-56:2.

2016 NOTE: Past publications of the GCA included an annotation regarding the source of this provision, and the rules and regulations governing the use of cameras and audio equipment in courtrooms, which were adopted pursuant to P.L. 25-142:3 (May 26, 2000). On August 11, 2016, the Supreme Court of Guam adopted the Judiciary of Guam Rules Governing Electronic Coverage of Judicial Proceedings, pursuant to PRM 16-001-01. The rules may be retrieved from the Supreme Court of Guam and the Compiler of Laws website.

§ 1.25. Computation of Time.

(a) In computing any period of time the day of the act or event 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 or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When a period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays, shall be excluded in the computation.

(b) When an act is required or allowed to be done at or within a specified time, the court for cause 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 if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action pursuant to Chapter 100 (commencing with § 100.10) or §§ 110.30, 115.10, and 120.46, except to the extent and under the conditions stated in them.

(c) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing unless a different period is fixed by

statute or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one (1) day before the hearing unless the court permits them to be served at a later time.

(d) Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, three (3) days shall be added to the prescribed period.

COMMENT: § 1.25 is substantively the same as former Rule 45. See also Fed. R. Crim. P. 45 (same). See generally 8A Moore, Federal Practice ¶¶45.01-45.05 (1974).

§ 1.27. Motions to be in Writing; Exceptions.

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

COURT DECISIONS: SUPERIOR COURT, 1978. Grounds for any motion need not be stated with particularity. Moving party's citation to § 70.25 of this Code in its Points and Authorities adequately complies with requirements of § 1.27. People v. Aflague, Sup. Ct. Cr. #200F-78 (Decision and Order, 12/05/78; Benson, J.)

COMMENT: § 1.27 is identical to former Rule 47. See also Fed. R. Crim. P. 47 (same). See generally 8A Moore, Federal Practice ¶¶47.01-47.02 (1974).

§ 1.29. Motions: Service, Time, Filing With Court.

(a) Written motions other than those which are heard ex parte, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Whenever under this Code or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing. Lack of notice of the

entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by § 130.40.

(d) Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

COMMENT: § 1.29 is substantively the same as former Rule 49. The second sentence of Subsection (c) incorporates the substance of a comparable provision in Rule 49 of the Federal Rules of Criminal Procedure. See generally 8A Moore, Federal Practice ¶¶49.01-49.05 (1974).

§ 1.31. Court Always Open.

The court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturday, Sundays and legal holidays.

COMMENT: § 1.31 is identical to former Rule 56. See also Fed. R. Crim. P. 56 (same). See generally 8A Moore, Federal Practice ¶¶56.01-56.02 (1974).
