

LEONARDO M. RAPADAS
Attorney General



PHILLIP J. TYDINGCO
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

February 4, 2014

The Honorable Tina Rose Muna Barnes
Legislative Secretary, 32nd Guam Legislature
155 Hesler Place
Hagatna, Guam 96910

32-14-255
Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 2.5.14
Time 10:05 am
Received by [Signature]

Re: **This is a Transmittal to *I Liheslaturan Guahan* of the Proposed Rules and Regulations Governing the Process By Which A Person May Seek Removal of His/Her Name From the Family Violence Registry pursuant to the Administrative Adjudication Law**

Dear Senator Barnes,

Pursuant to 5 G.C.A. §9303 of the Administrative Adjudication Law, our office now submits the required documents relative to the Proposed Rules and Regulations Governing the Process By Which A Person May Seek Removal of His/Her Name From the Family Violence Registry. Enclosed are the following documents:

- 1) Printed and identical electronic (word) version of the original approval copy of the proposed rules and regulations, to include one duplicate copy (Appendix "1");
- 2) Printed and identical electronic copy of the entire record of the public hearing on the proposed rules and regulations held on January 17th, 2014, to include the Notice of Public Hearing that was published in the Marianas Variety Newspaper on January 3rd, 2014 (Appendix "2"); and
- 3) Printed copy of the Economic Impact Statement (Appendix "3").

Sincerely,

LEONARDO M. RAPADAS
Attorney General of Guam

1255

Office of the Legislative Secretary
Senator Tina Rose Muna Barnes
Date 02-04-14
Time 9:45
Received by [Signature]

2014 FEB - 6 AM 11:16 M

APPENDIX “1”

RULES AND REGULATIONS GOVERNING THE PROCESS BY WHICH A PERSON MAY SEEK REMOVAL OF HIS NAME FROM THE FAMILY VIOLENCE REGISTRY DATABASE

§ 1301. PURPOSE AND AUTHORITY

§ 1302. DEFINITIONS

§ 1303. PETITION

§ 1304. EFFECTIVE DATE

§ 1305. SEVERABILITY

Section 1301. Purpose and Authority. The purpose of these administrative rules and regulations is to state the process by which a petition can be made to remove a person's name from the Family Violence Registry database and the eligibility rules. These regulations are promulgated under authority of 9 G.C.A. § 30.200(e).

Section 1302. Definitions.

- (a) *Petitioner* refers to a person whose name personally appears on the Family Violence Registry database, and who signs and files with the Office of the Attorney General an Petition for Removal from the Family Violence Database Registry.
- (b) *Court Clearance* is a document issued by a court that lists all criminal charges filed against the petitioner and their disposition or the absence of charges filed against the petitioner.
- (c) *Jurisdiction* means the governing law enforcement agency and court for a given address or residence.
- (d) *Police Clearance* is document issued by a police department that lists all arrests of the petitioner (date and charge) and the disposition of each arrest, or the absence of arrests of the petitioner.
- (e) *Conviction is defined as follows:*
 - (1) **Adult Conviction.** The term conviction refers to each separate charge to which the offender either voluntarily pleads guilty and such guilty plea has been accepted by the Court, whether in a single hearing or in separate hearings, or is found guilty by a trier of fact, whether the charges are contained in one (1) indictment, or separate indictments. This term includes convictions based on pleas of nolo contendere and guilty pleas entered pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

“Conviction” for the purposes of this Chapter includes if the offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

(2) Juvenile Conviction. A juvenile offender is “convicted” for the purposes of this Chapter if the juvenile offender is prosecuted and found guilty as an adult, including those juveniles convicted through the certification process in Title 19, Guam Code Annotated, § 5106

Section 1303. Petition. Persons who seek the removal of their names from the Family Violence Database Registry shall submit a petition to the Office of the Attorney General upon a form approved by the Office of the Attorney General, which shall require the disclosure of the following information and attachment of the following documents:

- a) The petitioner shall state his present address and the address of all residences for the ten-year period preceding the date of the petition.
- b) The petitioner shall attach court clearances and police clearances from each jurisdiction listed in the statement of present and prior residences. The petitioner is solely responsible for obtaining police and court clearances.
- c) The petitioner will be responsible for providing additional information upon request if such information is necessary to determine the record of the petitioner during the period defined by § 1303(a).
- d) The Office of the Attorney General will refuse to accept incomplete petitions. Upon receipt of a complete and correct petition, the Office of the Attorney General will process the petition and notify the petitioner of the decision within one hundred twenty (120) days of the date of submission, unless extraordinary circumstances require a greater time. If the petitioner is found eligible, the Office will immediately remove the record from the Family Violence Database Registry.
- e) A petitioner whose petition has been denied but wishes to re-apply in the belief that petitioner has become eligible for removal since the denial shall be considered a new petitioner, and shall be required to submit a new petition and the documents required by § 1303(b).
- f) Submission of the required documents does not automatically deem a person's name will be removed from the Family Violence Registry. Removal will be subject to the requirements set forth in Title 9 G.C.A. §30.200, particularly §§30.200(d).
- g) New convictions for family violence, domestic violence, dating violence, stalking, criminal sexual conduct, aggravated assault, or homicide occurring during the pendency of the petition shall be cause for the petitioner *not* to be removed from the Family Violence Registry.
- h) Any new conviction that places the petitioner’s name back onto the registry will require a new petition for the removal of petitioner’s name, and removal will be subject to all requirements as prescribed under the Family Violence Registry Act.

- i) Upon notice from any individual that the individual's name has been placed in error upon the registry, the Office of the Attorney General will promptly review the allegation and remove the name record from the registry if satisfied that an error in placement has occurred.

Section 1304. Effective Date. These rules and regulations shall become effective immediately upon enactment.

Section 1305. Severability. If any provisions or petition of any provision of these rules and regulations are held invalid, such invalidity shall not affect the other provisions or petitions of these rules and regulations.

**RULES AND REGULATIONS GOVERNING THE PROCESS BY WHICH A PERSON
MAY SEEK REMOVAL OF HIS NAME FROM THE FAMILY VIOLENCE REGISTRY
DATABASE**

§ 1301. PURPOSE AND AUTHORITY

§ 1302. DEFINITIONS

§ 1303. PETITION

§ 1304. EFFECTIVE DATE

§ 1305. SEVERABILITY

Section 1301. Purpose and Authority. The purpose of these administrative rules and regulations is to state the process by which a petition can be made to remove a person's name from the Family Violence Registry database and the eligibility rules. These regulations are promulgated under authority of 9 G.C.A. § 30.200(e).

Section 1302. Definitions.

- (a) *Petitioner* refers to a person whose name personally appears on the Family Violence Registry database, and who signs and files with the Office of the Attorney General an Petition for Removal from the Family Violence Database Registry.
- (b) *Court Clearance* is a document issued by a court that lists all criminal charges filed against the petitioner and their disposition or the absence of charges filed against the petitioner.
- (c) *Jurisdiction* means the governing law enforcement agency and court for a given address or residence.
- (d) *Police Clearance* is document issued by a police department that lists all arrests of the petitioner (date and charge) and the disposition of each arrest, or the absence of arrests of the petitioner.
- (e) *Conviction is defined as follows:*
 - (1) **Adult Conviction.** The term conviction refers to each separate charge to which the offender either voluntarily pleads guilty and such guilty plea has been accepted by the Court, whether in a single hearing or in separate hearings, or is found guilty by a trier of fact, whether the charges are contained in one (1) indictment, or separate indictments. This term includes convictions based on pleas of nolo contendere and guilty pleas entered pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

“Conviction” for the purposes of this Chapter includes if the offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

(2) Juvenile Conviction. A juvenile offender is “convicted” for the purposes of this Chapter if the juvenile offender is prosecuted and found guilty as an adult, including those juveniles convicted through the certification process in Title 19, Guam Code Annotated, § 5106

Section 1303. Petition. Persons who seek the removal of their names from the Family Violence Database Registry shall submit a petition to the Office of the Attorney General upon a form approved by the Office of the Attorney General, which shall require the disclosure of the following information and attachment of the following documents:

- a) The petitioner shall state his present address and the address of all residences for the ten-year period preceding the date of the petition.
- b) The petitioner shall attach court clearances and police clearances from each jurisdiction listed in the statement of present and prior residences. The petitioner is solely responsible for obtaining police and court clearances.
- c) The petitioner will be responsible for providing additional information upon request if such information is necessary to determine the record of the petitioner during the period defined by § 1303(a).
- d) The Office of the Attorney General will refuse to accept incomplete petitions. Upon receipt of a complete and correct petition, the Office of the Attorney General will process the petition and notify the petitioner of the decision within one hundred twenty (120) days of the date of submission, unless extraordinary circumstances require a greater time. If the petitioner is found eligible, the Office will immediately remove the record from the Family Violence Database Registry.
- e) A petitioner whose petition has been denied but wishes to re-apply in the belief that petitioner has become eligible for removal since the denial shall be considered a new petitioner, and shall be required to submit a new petition and the documents required by § 1303(b).
- f) Submission of the required documents does not automatically deem a person's name will be removed from the Family Violence Registry. Removal will be subject to the requirements set forth in Title 9 G.C.A. §30.200, particularly §§30.200(d).
- g) New convictions for family violence, domestic violence, dating violence, stalking, criminal sexual conduct, aggravated assault, or homicide occurring during the pendency of the petition shall be cause for the petitioner *not* to be removed from the Family Violence Registry.
- h) Any new conviction that places the petitioner’s name back onto the registry will require a new petition for the removal of petitioner’s name, and removal will be subject to all requirements as prescribed under the Family Violence Registry Act.

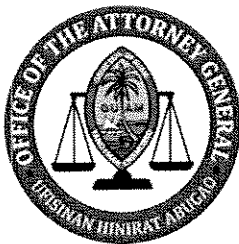
- i) Upon notice from any individual that the individual's name has been placed in error upon the registry, the Office of the Attorney General will promptly review the allegation and remove the name record from the registry if satisfied that an error in placement has occurred.

Section 1304. Effective Date. These rules and regulations shall become effective immediately upon enactment.

Section 1305. Severability. If any provisions or petition of any provision of these rules and regulations are held invalid, such invalidity shall not affect the other provisions or petitions of these rules and regulations.

APPENDIX “2”

LEONARDO M. RAPADAS
Attorney General



PHILLIP J. TYDINGCO
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

Minutes for the Public Hearing on Proposed Rules and Regulations Governing the Process By Which A Person May Seek Removal of His/Her Name From the Family Violence Registry Pursuant to 9 G.C.A. §30.200(e)

Date and Time of Public Hearing: January 17th, 2014 (Friday) at 4:00 p.m.
Location: Sunset Conference Room, ITC Building,
590 Marine Corps Drive, Tamuning, Guam 96931

1. Meeting Called to Order

Good Afternoon, Office of the Attorney General, this is Lenny Rapadas, calling to order public hearing on the proposed rules and regulations governing the process by which a person may seek removal of his/her name from the family violence registry pursuant to 9 G.C.A §30.200(e).

Today's date is January 17, 2014. It is now 4:30 pm.

2. Discussion of the Proposed Rules and Regulations Governing the Process By Which A Person May Seek Removal of His/Her Name From the Family Violence Registry

We published notice of this hearing, pursuant to the administrative adjudication law, at least 10 days prior to this hearing, in the Marianas Variety the date being January 3, 2014. It's been more than 10 days since publication giving the public enough opportunity to be heard or to testify on the proposed rules. We provided copies as required by the statute and we've also provided a copy on our website for the public to review.

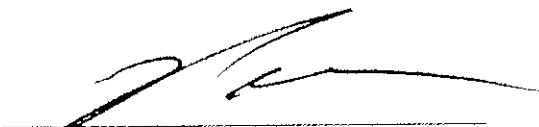
As far as I know for the record, we have not received any testimony either for or against for the proposed rules. The hearing was set for 4:00 p.m., and it's now 4:30 p.m. and we still have yet to receive any testimony from anyone. We had a log in sign-up sheet that was set up for the last 10 days or so since the publication of the notice and no one has signed up for testimony.

3. Adjournment

At this point, I'm going to call this hearing as closed at this point. So until we hear from anyone we are going to close the hearing for the day and consider it publicly heard and will seek to have this rule to be formally adopted by the Guam Legislature.

It is now 4:35 pm or so, January 17, 2014. We are adjourned.

Date: January 17, 2014


LEONARDO M. RAPADAS
Attorney General of Guam



Marianas Variety

The Local & Regional Newspaper

Guam Edition

Leonardo M. Rapadas
Attorney General



Phillip J. Tydingco
Chief Deputy
Attorney General

Office of the Attorney General
590 S. Marine Corps Drive, Tamuning, Guam 96931
Telephone: (671) 475-3324 Fax: (671) 475-3343
Website: www.guamag.org

NOTICE OF PUBLIC HEARING ON PROPOSED RULES AND REGULATIONS GOVERNING THE PROCESS BY WHICH A PERSON MAY SEEK REMOVAL OF HIS/HER NAME FROM THE FAMILY VIOLENCE REGISTRY PURSUANT TO 9 G.C.A. §30.200(e)

4:00 p.m. Friday, January 17th, 2014
Sunset Conference Room, ITC Building,
590 S. Marine Corps Drive, Tamuning, Guam 96931

The Office of the Attorney General of Guam will hold a public hearing on Friday, January 17th, 2014 at 4:00 p.m. in the Sunset Conference Room, Office of the Attorney General of Guam, ITC Building to discuss the Proposed Rules and Regulations Governing the Process by which a person may seek removal of his or her name from the Family Violence Registry pursuant to 9 G.C.A. §30.200(e).

The public is invited to attend this public hearing and will be afforded an adequate opportunity to participate in the formulation of the proposed rule or rules through the presentation of facts or argument or the submission of written data or views.

Copies of the proposed rules and regulations, and the relevant economic impact statement will be made available to the public for review and examination at the Office of the Attorney General of Guam located at the ITC Building. Copies will also be made available on the Office of the Attorney General of Guam webpage at www.guamag.org

Persons with disabilities requiring special accommodations, should contact the Office of the Attorney General of Guam either at (671) 475-3324, extension 5015 or 5020, or by email at law@guamag.org

LEONARDO M. RAPADAS
Attorney General of Guam

APPENDIX “3”

ECONOMIC IMPACT STATEMENT

RULES AND REGULATIONS GOVERNING THE PROCESS BY WHICH A PERSON MAY SEEK REMOVAL OF HIS NAME FROM THE FAMILY VIOLENCE REGISTRY DATABASE

In our analysis the economic impact of this proposed regulation will affect two persons: the petitioner who must prepare and file his petition for removal, and the Office of the Attorney General that must process the petition. Our findings regarding each impact will follow the preliminary statements required by 5 G.C.A. § 9301(f).

The Purpose and Need for the Regulation

Under 9 G.C.A. § 30.200(a), the Office of the Attorney General has been mandated to create and maintain a registry database of persons who have been convicted of the offense of family violence or stalking. However, under § 30.200(d), such persons may cause the removal of their names and associated records if certain conditions prescribed in that subsection are satisfied. Under § 30.200(e) the Office of the Attorney General must promulgate regulations under the Administrative Adjudication Act that will define the procedure by which affected persons may remove their names.

The Risks and Costs of Enactment of the Regulation

The regulation contains no requirement that petitioner pay a fee, despite the fact that there will be anticipated costs of administering it. Section 30.200 does not authorize the Office of the Attorney General to assess a fee. However, costs to both the petitioner and the Office are anticipated.

The petitioner must secure police and court clearances from all jurisdictions where he or she resided during the period preceding the date of the petition, which could be as long as ten years. The petitioner may incur fees in mailing requests to the agencies. The agencies with those records may assess a fee to the petitioner. The Office of the Attorney General has not conducted a study of those costs, for from common experience we conclude that they should be of such an amount as not to present a barrier to the petitioner. For example, as of December 2013 the fee for a GPD Police Clearance is \$7.00 and the fee for a Superior Court of Guam Clearance is \$10.00.

Placement of the responsibility upon the petitioner rather than the Office of the Attorney General has been chosen because of the economic impact upon the Office if it should seek court and police clearances on behalf of the petitioners.

If the Office were to apply or and obtain police and court clearances for the petitioners, the task would adversely impact the administration of the other missions of the Office of the Attorney General. From past experience the Legislative has chosen not to include funding for the administration of this program.

The regulation has no identifiable impact upon the people and economy of Guam. As noted, the amounts and fees that the petitioners will have to pay should have no discernible direct or indirect affect upon the economy of Guam, the cost of living on Guam, of the price or availability of any goods or services on Guam.

The same can be said regarding the impact of employment on Guam or the number of jobs that are available on Guam. Nor will the costs of doing business be affected, as the petitioner will be individuals, not businesses.

Conclusion

In conclusion, in our analysis the economic impact of this regulation to the general public should be less than \$500,000 and thus a more scientific analysis of the economic impact should be exempted from the requirements of § 9301(f).