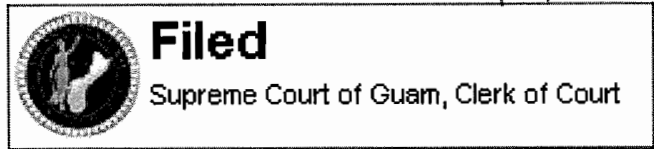


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**APPELLATE CASE NO. CVA2016-005**  
**(Superior Court of Guam Special Proceedings Case No. SP0137-14)**

**IN THE SUPREME COURT OF GUAM**

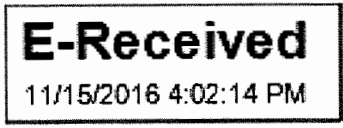
**IN THE APPLICATION OF DEPARTMENT  
OF HEALTH AND SOCIAL SERVICES  
FOR ADMINISTRATIVE INSPECTION  
AND SEARCH WARRANT OF WISE OWL  
ANIMAL HOSPITAL**

**On Appeal from the Superior Court of Guam**

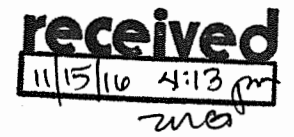
**APPELLEE GUAM DEPARTMENT OF PUBLIC HEALTH AND SOCIAL  
SERVICES' SUPPLEMENTAL BRIEFING RE: GRCP 58(a)(1);  
JURISDICTION; AND GRCP 58(b)(2)(B)**

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AG File 13.0321 A HR



## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii-iv
INTRODUCTION.....	1
FACTUAL AND PROCEDURAL BACKGROUND.....	1
STATEMENT OF SUPPLEMENTAL ISSUES .....	2
STANDARD OF REVIEW .....	3
SUMMARY OF SUPPLEMENTAL ARGUMENTS .....	4
I.    Requirements for a Valid Judgment.....	4
II.   The Purported Defects in The Judgment Do not Deprive This Court of Jurisdiction to Hear the Appeal .....	4
III.  GRCP 58(b)(2)(B) Provides An Alternative Basis for this Court’s Jurisdiction .....	4
SUPPLEMENTAL ARGUMENT .....	5
I.    REQUIREMENTS FOR A VALID JUDGMENT UNDER GRCP 58(a)(1).....	5
II.   ASSUMING <i>ARGUENDO</i> THE PURPORTED JUDGMENT DOES NOT COMPLY WITH GRCP 58(a)(1) – THIS COURT HAS JURISDICTION TO HEAR THE APPEAL PURSUANT TO HARMLESS ERROR AND “OTHER ANALYSIS”, INCLUDING WAIVER AND PUBLIC POLICY .....	6
A.  This Court Should Adopt the Reasoning of <i>Bankers Trust Co.</i> <i>v. Mallis</i> and Accept Jurisdiction Over This Appeal .....	6
B.  The Parties Have Waived the Separate Document Requirement .....	9
C.  The Harmless Error Standard Applies.....	12

**III. ASSUMING *ARGUENDO* DEFECTS IN THE PURPORTED JUDGMENT WOULD OTHERWISE DEPRIVE THE COURT OF JURISDICTION, GRCP 58(b)(2)(B) STILL PERMITS THIS APPEAL TO PROCEED BECAUSE THE ORDER TAKEN TOGETHER WITH THE FINDINGS AND AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW FULLY SET FORTH THE RIGHTS AND OBLIGATIONS OF THE PARTIES.....14**

**CONCLUSION .....16**

**GRAP 16(a)(7)(D) CERTIFICATE .....18**

## TABLE OF AUTHORITIES

### Cases

<i>A.B. Won Pat Guam Intern. Airport Authority v. Moylan</i> , 2004 Guam 1 .....	6, 9, 12
<i>Agana Beach</i> , 2015 Guam 35 .....	16
<i>Bankers Trust Co. v. Mallis</i> , 435 U.S. 381 (1978) .....	6, 7, 8, 9, 11
<i>Casey v. Albertson’s, Inc.</i> 362 F.3d 1254 (9 Cir. 2004) .....	10
<i>Department of Revenue and Taxation v. Civil Service Com’n</i> , 2007 Guam 17 .....	5
<i>Gill v. Seigel</i> , 2000 Guam 10 .....	6
<i>Guam Election Commission v. Responsible Choice for All Adults Coalition</i> , 2007 Guam 20 .....	3
<i>In Re Bankruptcy Petition Preparers Who Are Not Certified Pursuant to Requirements of the Arizona Supreme Court</i> , 307 B.R. 134, 139-140 (9 <sup>th</sup> Cir. 2004) .....	3
<i>J.J. Moving Services, Inc. v. Sanko Bussan (Guam) Co., Ltd.</i> , 1998 Guam 19 .....	13
<i>Marriott v. Marriott</i> , 2014 Guam 28 .....	16
<i>Merchant v. Nanyo Realty, Inc.</i> , 1997 Guam 16 .....	6, 7, 9, 11, 12
<i>LeBoon v. Lancaster Jewish Community Center Ass’n</i> , 503 F.3d 217 (2007) .....	5
<i>Lujan v. Lujan</i> , 2012 Guam 7 .....	3
<i>Pasmore v. Republic of Nauru (Guam), Inc.</i> , 1995 WL 604378 (Guam Dist. Ct.) ...	7
<i>People of Guam v. Angoco</i> , 2006 Guam 18 .....	5
<i>Sanchez v. Rodriguez</i> , 298 F.R.D. 460, 466 (C.D. Cal. 2014) .....	5
<i>U.S. v. Lummi Indian Tribe</i> , 235 F.3d 443 (9 Cir. 2000) .....	7

**Statutes**

7 G.C.A. § 3107 .....7, 9, 11  
7 G.C.A. § 3108 .....9  
7 G.C.A. § 15802 ..... 13  
28 U.S.C. § 1291 .....7, 8

**Federal Rules**

Fed. R. Civ. P. 58 .....5, 9  
Fed. R. Civ. P. 58(a)(1).....7

**Guam Rules**

Guam R. App P. 4 ..... 12  
Guam R. App P. 4(a)(2)..... 15  
Guam R. Civ. P. 1 .....9  
Guam R. Civ. P. 58 .....1, 3, 4, 5, 6, 8, 9, 12, 16  
Guam R. Civ. P. 58(a)(1).....2, 3, 4, 5, 6, 7, 13  
Guam R. Civ. P. 58(b)(2)(B) .....2, 3, 4, 14, 16  
Guam R. Civ. P. 61 .....12, 16  
Guam R. Civ. P. 79(a).....4, 14

## **INTRODUCTION**

In accordance with the Court's order of November 3, 2016, the Guam Department of Public Health and Social Services ("DPHSS" or "Public Health") submits the following supplemental brief regarding the application of Guam Rules of Civil Procedure Rule 58 to the purported judgment entered in this case.

## **FACTUAL AND PROCEDURAL BACKGROUND**

The Superior Court held an evidentiary hearing on Joseph's Motion for Return of Property Seized Pursuant to a Search Warrant on February 20, 2015. ER 69. Findings of Fact and Conclusions of Law were entered pursuant to said hearing on July 7, 2015. ER 39. Notice of Entry on the Docket of the Findings and Conclusions was entered on July 8, 2015. RA 35. Amended Findings of Fact and Conclusions of Law were entered on October 30, 2015. ER 44. Notice of Entry on the Docket of the Amended Findings and Conclusions was entered on November 3, 2015. RA 35. Joseph filed his List of Unreturned Items on December 1, 2015. RA 46. Motion for Entry of Judgment was filed by Public Health on November 19, 2015. RA 44. A Judgment was entered by Superior Court on December 14, 2015. RA 48. Joseph filed a Motion and Memorandum to vacate the Judgment on December 23, 2015. RA 54. A Decision and Order regarding Joseph's List of Unreturned Items was filed by Superior Court on March 30, 2016. RA 68. Notice of Entry on the Docket of the Decision and Order regarding Joseph's List of Unreturned Items was filed on March

31, 2016. RA 71. A Decision and Order regarding Public Health's Motion for Entry of Judgment was filed by Superior Court on March 30, 2016. RA 69. Notice of Entry on the Docket of the Decision and Order regarding Public Health's Motion for Entry of Judgment was filed on March 31, 2016. RA 72.

A Judgment was filed by Superior Court on March 30, 2016. ER 67. This Judgment references attachment of both Findings of Fact and Conclusions of Law, and Amended Findings of Fact and Conclusions of Law. The original Judgment filed by the court omitted attachment of both the original Findings of Fact and Conclusions of Law and the Amended Findings of Fact and Conclusions of Law. ER 67. A Notice of Entry on the Docket of the Judgment was filed on March 31, 2016. RA 73.

Joseph filed his Notice of Appeal on April 25, 2016. ER 68

### **STATEMENT OF SUPPLEMENTAL ISSUES**

1. What are the requirements for a valid Judgment under Guam Rule of Civil Procedure 58(a)(1)?
2. Assuming the Purported Judgment does not comply with GRCP 58(a)(1) – whether defects in the Purported Judgment deprive the court of jurisdiction to hear an appeal predicated on that document, or are instead subject to harmless error or other analysis?
3. Assuming defects in the Purported Judgment would otherwise deprive the Court of jurisdiction, whether GRCP 58(b)(2)(B) would nonetheless permit the appeal to proceed based on the Amended Findings of Fact, Conclusions of Law, and Order where that document does not itself fully set forth the rights and obligations of the parties?

## STANDARD OF REVIEW

The standard of review for all three issues to be addressed is *de novo*. The question of what the requirements are for a valid judgment under GRCP 58(a)(1) is a question of law regarding interpretation of Guam's civil rules. Interpretations of rules are issues of statutory interpretation and reviewed *de novo*. *In Re Bankruptcy Petition Preparers Who Are Not Certified Pursuant to Requirements of the Arizona Supreme Court*, 307 B.R. 134, 139-40 (9<sup>th</sup> Cir. 2004). Questions of law are reviewed *de novo*. *Lujan v. Lujan*, 2012 Guam 7 ~ 8.

The second issue of whether the failure of a judgment to comply with Civil Rule 58 deprives this court of jurisdiction is a question of law and is reviewed *de novo*. *See Guam Election Commission v. Responsible Choice for All Adults Coalition*, 2007 Guam 20 ¶ 23 (When there are no facts in dispute and questions presented for review are strictly questions of law, review is *de novo*.)

The third issue of whether this court has jurisdiction to hear this appeal under GRCP 58(b)(2)(B) is also reviewed *de novo*. *See Guam Election Commission v. Responsible Choice for All Adults Coalition, supra; In Re Bankruptcy Petition Preparers Who Are Not Certified Pursuant to Requirements of the Arizona Supreme Court, supra; Lujan v. Lujan, supra.*



## **SUMMARY OF SUPPLEMENTAL ARGUMENTS**

### **I. Requirements for a Valid Judgment**

Rule 58 of the Guam Rules of Civil Procedure requires a formal separate judgment on a separate document.

### **II. The Purported Defects in the Judgment do not Deprive this Court of Jurisdiction to Hear the Appeal**

The lack of existence of a separate-document judgment is not a prerequisite to appellate jurisdiction because the trial court issued a final decision. Joseph waived the issue of a separate-document judgment. The purpose of the separate-document judgment rule is to provide a clear timeframe for appeal, and such purpose was not frustrated by the Superior Court's entry of the purported judgment on appeal. Public policy and judicial economy support this court exercising its jurisdiction to hear this appeal.

### **III. GRCP 58(b)(2)(B) Provides An Alternative Basis for this Court's Jurisdiction**

If this court finds it lacked jurisdiction because the judgment failed to comply with the separate document requirement under GRCP 58(a)(1), this court still has jurisdiction under GRCP 58(b)(2)(B), which allows this court to treat either the Judgment or the trial court's Decision and Order Denying Return of Requested Items to Joseph, as the judgment, when 150 days have run from its entry in the civil docket under Civil Rule 79(a). Here, this court has jurisdiction to hear this appeal as more

than 150 days have run since the purported judgment or trial court's decision and order were entered in the civil docket.

## SUPPLEMENTAL ARGUMENT

### I. Requirements for a Valid Judgment under GRCP 58(a)(1)

Guam Rules of Civil Procedure Rule 58(a)(1) sets forth the requirement for a judgment. It generally requires that “[e]very judgment and amended judgment must be set forth on a separate document...”. GRCP 58(a)(1); *People of Guam v. Angoco*, 2006 Guam 18 ¶ 12 (holding that Rule 58 of the Guam Rules of Civil Procedure requires a formal separate judgment on a separate document).

Guam's civil rule is based upon Fed. R. Civ. P. 58. Courts interpreting the federal rule have held that a document must satisfy three criteria to meet the separate document rule: (1) it must be self-contained and separate from the opinion; (2) it must note the relief granted; and (3) it must omit (or at least substantially omit) the trial court's reasons for disposing of the claims. *LeBoon v. Lancaster Jewish Community Center Ass'n*, 503 F.3d 217, 224 (2007); accord *Sanchez v. Rodriguez*, 298 F.R.D. 460, 466 (C.D. Cal. 2014).

This court has recognized that Civil Rule 58 requires a judgment to be “self-contained and complete.” *Department of Revenue and Taxation v. Civil Service Com'n*, 2007 Guam 17 ¶ 16 n.4.

**II. Assuming *Arguendo* The Purported Judgment Does Not Comply With GRCP 58(a)(1) – This Court Has Jurisdiction To Hear The Appeal Pursuant To Harmless Error And “Other Analysis”, Including Waiver And Public Policy**

***A. This court should adopt the reasoning of Bankers Trust Co. v. Mallis and accept jurisdiction over this appeal.***

The Wise Owl judgment is a one page document<sup>1</sup> which states that the trial court held an evidentiary hearing, entered Findings and Conclusions, and Amended Findings and Conclusions, and enters its judgment as set forth in those documents. The Judgment says the Findings and Amended Findings are attached, but apparently they were inadvertently not attached. ER 67. The judgment does not satisfy the separate document requirement of Rule 58. It is not a self-contained document. However, failure to comply with the separate document requirement does not deprive this court of jurisdiction.

In *A.B. Won Pat Guam Intern. Airport Authority v. Moylan*, 2004 Guam 1 ¶ 10, this court addressed the separate document requirement:

[A]ppellate jurisdiction is also limited by the “separate document rule.” *Gill v. Seigel*, 2000 Guam 10, ¶ 6. Under the “separate document rule,” an appeal may only be taken from a judgment which is set forth on a separate document as required under Rule 58 of the Guam Rules of Civil Procedure. *Id.* (“In *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16, ¶ 15, this court adopted strict adherence to the ‘separate document rule’ which interprets Rule 58 of the Guam Rules of Civil Procedure as requiring a formal, separate judgment prior to this court’s ability to obtain jurisdiction on appeal.”); *see also Merchant*, 1997 Guam 16 at ¶ 16 (dismissing the case

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<sup>1</sup> The judgment references Findings and Amended Findings as attached and incorporated by reference, but there are no attachments. *See* ER 67.

for lack of jurisdiction because a judgment was not entered on a separate document).

Under the foregoing authority, this court does have jurisdiction of this appeal even though the separate document rule was not formally satisfied. *Merchant v. Nanyo Realty, Inc.*, 1997 Guam 16 ¶ 10, did not hold that this court lacks jurisdiction absent a strict adherence to the separate document rule. Instead, the court specifically noted that “it is not necessary for us to determine whether we would, for purposes of Guam’s judicial administration, accept jurisdiction over a matter like [*Bankers Trust Co. v. Mallis*, 435 U.S. 381, 383 (1978)], where the separate document rule was not formally satisfied.” *Id.* 1997 Guam 16 ¶ 15. Here the court should adopt the reasoning of *Bankers Trust Co. v. Mallis* and accept jurisdiction over this appeal for the reasons stated below.

Fed. R. Civ. P. 58(a)(1), like Guam’s civil rule 58(a)(1), generally requires that “[e]very judgment and amended judgment must be set out in a separate document”. However, entry of a separate document is not a prerequisite to appellate jurisdiction under 28 U.S.C. § 1291<sup>2</sup>. *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 383 (1978); *accord U.S. v. Lummi Indian Tribe*, 235 F.3d 443, 448 (9<sup>th</sup> Cir. 2000); *Pasmore v. Republic of Nauru (Guam), Inc.*, 1995 WL 604378 (Guam Dist. Ct.).

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<sup>2</sup> 28 U.S.C. § 1291 provides federal courts of appeals with jurisdiction of appeals from all final decisions of the district courts of the U.S. It is analogous to 7 G.C.A. § 3107 which provides this court with jurisdiction of all appeals arising from judgments, final decrees or final orders of the Guam Superior Court. Thus federal case law provides guidance on the issue of appellate jurisdiction.

In *Bankers Trust*, the Supreme Court assumed, but did not decide, that the requirements for an effective judgment set forth in the Federal Rules of Civil Procedure must generally be satisfied before § 1291 jurisdiction may be invoked. There, the district court failed to enter a judgment as a separate document, but the district court's "opinion and order" contained the language "[c]omplaint dismissed in its entirety. So ORDERED." 435 U.S. at 382 & n.1. The Supreme Court held that "it could not have been intended that the separate document requirement of Rule 58 be such a categorical imperative that the parties are not free to waive it." *Id.* at 384.

Certainty as to timeliness, however, is not advanced by holding that appellate jurisdiction does not exist absent a separate judgment. If, by error, a separate judgment is not filed before a party appeals, nothing but delay would flow from requiring the court of appeals to dismiss the appeal. Upon dismissal, the district court would simply file and enter the separate judgment, from which a timely appeal would then be taken. Wheels would spin for no practical purpose.

... The need for certainty as to the timeliness of the appeal [i.e., the purpose of Rule 58] ... should not prevent the parties from waiving the separate-judgment requirement where one has accidentally not been entered.

... Here, the District Court clearly evidenced its intent that the opinion and order from which an appeal is taken would represent the final decision in the case. A judgment of dismissal was recorded in the clerk's docket. And petitioner did not object to the taking of the appeal in the absence of a separate judgment. Under these circumstances, the parties should be deemed to have waived the separate document requirement of Rule 58, and the Court of Appeals properly assumed appellate jurisdiction under § 1291.

*Id.* at 385–86, 387–88.

Rule 1 of the Guam Rules of Civil Procedure provides that the rules are to be “construed to secure the just, speedy, and inexpensive determination of every action.” Adopting the interpretation of Fed. R. Civ. P. 58 by the Supreme Court in *Bankers Trust* is consistent with how Guam’s civil rules are to be interpreted.

This court should hold that the existence of a separate document consisting of the judgment is not a prerequisite to appellate jurisdiction. This court should hold that appellate jurisdiction depends upon whether there is a final judgment under 7 G.C.A. Sections 3107-08. This is, in fact, how this court has been applying the separate document requirement under Civil Rule 58. See *A.B. Won Pat Guam Intern. Airport Authority v. Moylan, supra*, ¶ 24 (“Because no final judgment has been entered in this mater, we lack jurisdiction over the appeal at this time.”); *Merchant v. Nanyo Realty, Inc., supra*, ¶ 13 (The “issue here is actually whether there is a judgment at all...”).

***B. The parties have waived the separate document requirement.***

Furthermore, as in *Bankers Trust*, this court should rule that Joseph and Public Health waived the separate document requirement. In *Bankers Trust*, the U.S. Supreme Court held that the parties waived the separate-judgment requirement of Rule 58 where the trial court clearly evidenced its intent in its final decision, a judgment was recorded in the docket, and the petitioner did not object to the taking of appeal in the absence of a separate judgment. 435 U.S. at 388.

In the instant case, the trial court ruled in its Decision and Order (regarding Movant's List of Unreturned Items): "By preponderance of the evidence and based on the foregoing reasons, the Court DENIES Movant's List of Unreturned Items." RA 68. In its Findings of Fact and Conclusions of Law the trial court ruled that DPHSS shall return the green list drugs; all other items not recommended by DPHSS for return shall remain in the custody and control of the Department. RA 34. Joseph engaged in extensive motions practice around the issue of whether a judgment should be entered.<sup>3</sup> The Judgment was entered herein on March 30, 2016. ER 67. Joseph filed his notice of appeal on April 25, 2016, within the required thirty-day time period for appeals. ER 68. Joseph's actions constitute a waiver of the separate document requirement.

"[T]he filing of an appeal and the parties proceeding before an appellate court as if a *separate* judgment had been entered was indicative of acknowledgement by the parties that a final judgment had been entered." *Casey v. Albertson's, Inc.* 362 F.3d 1254, 1259 (9<sup>th</sup> Cir. 2004) (emphasis added). Herein, all of the issues were disposed of in their entirety, and Joseph waived the separate document requirement through the filing of his appeal.

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<sup>3</sup> DPHSS' Motion for Entry of Judgment, RA 44; Joseph's Motion to Vacate Judgment, RA 54; DPHSS' Reply on its Motion for Entry of Judgment, RA 57; Joseph's Reply on his Motion to Vacate Judgment, RA 58; DPHSS' Response to Joseph's Motion to Vacate Judgment, RA 66.

The trial court's ruling was final for purposes of 7 G.C.A. § 3107. It ended the litigation on the merits through a full adjudication of the issues, and the record clearly evidences the trial court judge's intention that the Findings and Conclusions, Amended Findings and Conclusions and Decision and Order on Unreturned Items would be the trial court's final act in the matter. The instant case left no issues to be resolved. There is no uncertainty as to the finality of the trial court's rulings as evidenced by Joseph's filing of the appeal. This court should find the lack of a separate-document judgment is not a prerequisite to appellate jurisdiction and that the Superior Court's failure to comply with the requirement was harmless error.

In *Merchant v. Nanyo Realty, Inc.*, *supra*, this court distinguished *Bankers Trust Co. v. Mallis*, *supra*, and dismissed the appeal because it was unclear whether there had been a final judgment. However, the circumstances of the Joseph appeal are distinguishable from *Merchant*. In *Merchant*, the Appellee questioned the court's jurisdiction. 1997 Guam 16 ¶ 10. In the instant case, Joseph waived any issue of jurisdiction through the filing of his appeal and Public Health never questioned the jurisdiction of this court. In *Merchant*, this court further distinguished *Bankers Trust Co. v. Mallis* on the basis of lack of evidence that the Superior Court intended the order in question to serve as a final judgment. In the instant appeal, as set forth above, the record supports the Superior Court's intention that its Decision and Order, its final and amended Findings and Conclusions, and its



Judgment were intended to serve as a final decision. In *Merchant*, there was no docket entry which would unequivocally indicate a final judgment. In the instant case, there was a docket entry of a final judgment. SER 261. In *Merchant*, this court concluded that “Absent a record that clearly establishes such finality we would be hard pressed to justify our exercise of appellate authority.” *Id.* ¶ 12. The court is faced with no such dilemma here.

*A.B. Won Pat Guam Intern. Airport Authority v. Moylan*, 2004 Guam 1 is also distinguishable from the instant case. In *A.B. Won Pat*, this court dismissed an appeal for lack of jurisdiction because only a decision and order was issued; no judgment of any kind was issued nor was the peremptory writ issued by court entered on the docket as contemplated by GRAP 4. *Id.* ¶ 22. In the Joseph appeal, a judgment was issued which was entered on the docket. ER 67.

***C. The harmless error standard applies.***

GRCP 61 sets forth the harmless error standard applicable to the failure of the court to abide by the separate document requirement for judgments under Civil Rule 58. Under GRCP 61, no error or defect in any ruling or order or in anything done or omitted by the court is grounds for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Under the rule, the court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the

substantial rights of the parties. “[I]f a party claiming error fails to demonstrate the prejudicial effect of the admitted evidence, then the error will be deemed harmless.”

*J.J. Moving Services, Inc. v. Sanko Bussan (Guam) Co., Ltd.*, 1998 Guam 19 ¶ 21.

Here, Joseph failed to claim the error before the trial court and has failed to demonstrate any prejudicial effect.

Similarly, 7 G.C.A. § 15802 provides in relevant part:

No judgment, decision or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.

Joseph did not object to the form of the judgment, and no prejudice or substantial injury has occurred, nor would a different result have been reached if the error had not occurred. The error regarding the form of the judgment was harmless error.

Even though the purported judgment failed to comply with GRCP 58(a)(1), this court has jurisdiction to hear the appeal. This failure was harmless error. The judgment entered was a final judgment and Joseph waived the issue of a separate-document judgment.

**III. Assuming *Arguendo* Defects In The Purported Judgment Would Otherwise Deprive The Court Of Jurisdiction, GRCP 58(b)(2)(B) Still Permits This Appeal To Proceed Because the Order Taken Together With the Findings and Amended Findings of Fact and Conclusions of Law Fully Set Forth The Rights And Obligations Of The Parties**

Under GRCP 58(b)(2)(B), judgment is entered for purposes of Guam's civil rules when 150 days have run from entry in the civil docket under Rule 79(a). If this court finds that the judgment entered by the trial court is defective because it violates the separate document rule, then effectively no separate judgment would be entered and Rule 58(b)(2)(B) would apply.

In the instant case, a Judgment referencing attachment of both Findings and Amended Findings but attaching neither, *see* ER 67, was filed by the trial court on March 30, 2016 (RA 70), and entered on the docket on March 31, 2016 (RA 73).

Original Findings and Conclusions were filed on July 7, 2015 (RA 34) and entered on the docket on July 8, 2015 (RA 35). In its Findings of Fact and Conclusions of Law, the trial court ruled that DPHSS shall return the green list drugs; all other items not recommended by DPHSS for return shall remain in the custody and control of the Department. RA 34.

Amended Findings and Conclusions were filed on October 30, 2015 (RA 42) and entered on the docket on November 3, 2015 (RA 43). In its Amended Findings, the court corrected drug item numbers erroneously listed through clerical error by

Public Health in the original Findings by the court, as items to be retained by Public Health or returned to Joseph. RA 42.

A Decision and Order (regarding Joseph's List of Unreturned Items) was filed on March 30, 2016 (RA 68) and entered on the docket on March 31, 2016 (RA 71). The trial court ruled in its Decision and Order (regarding Joseph's List of Unreturned Items): "By preponderance of the evidence and based on the foregoing reasons, the Court DENIES Movant's List of Unreturned Items." RA 68.

The Decision and Order denying Joseph's requested list of items that had not been returned resolved all issues in the litigation and was entered on March 31, 2016. RA 71. The 150<sup>th</sup> day after entry of the Decision and Order fell on Sunday, August 28, 2016. Therefore, the 150<sup>th</sup> day was August 29, 2016.

The Judgment was entered on the docket on March 31, 2016. RA 73. The 150<sup>th</sup> day after entry of the Judgment on the docket was August 28, 2016, a Sunday, and therefore would fall on August 29, 2016, just like the Decision and Order.

Joseph filed his Notice of Appeal on April 25, 2016. ER 68. Joseph filed his opening brief on July 20, 2016, and his reply brief on August 29, 2016 (effectively being the 150<sup>th</sup> day after entry of the Decision and Order). Although Joseph's Notice of Appeal and Opening Brief were prematurely filed, GRAP 4(a)(2)<sup>4</sup> allows a

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<sup>4</sup> GRAP 4(a)(2) provides: "Filing before Entry of Judgment. A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry." The Notice of Appeal was filed April 25, 2016. The D&O was "announced" on March 30, 2016 through filing, and effectively became entered as the judgment through the 150-day rule on August 29, 2016. Therefore, the Notice of

prematurely entered Notice of Appeal to refer to the subsequently entered Judgment (effective date of entry of judgment by operation of law under the 150-day rule being August 28<sup>th</sup> for the Judgment, and August 29<sup>th</sup> for the Decision and Order). If no separate judgment is entered, Rule 58(b)(2)(B) allows a judgment to be effectively entered, for the purpose of the separate document rule, 150 days after entry of the underlying Decision and Order on the docket. *Agana Beach*, 2015 Guam 35 ¶ 10; *accord Marriott v. Marriott*, 2014 Guam 28 ¶ 9.

Thus the appeal was timely and proper once judgment was effectively entered on August 29, 2016. *See* n.4, *supra infra*.

Because the Decision and Order denied Joseph's requested return of his list of unreturned items, the Decision and Order was the document which finally and fully resolved the matter. Therefore, the fact that the Amended Findings referenced the original Findings was harmless error, if any error at all, given that neither was attached to the Judgment. ER 67. GRCP 61.

### CONCLUSION

The judgment entered in this matter failed to comply with the separate document requirement of Civil Rule 58. However, the failure of the judgment to comply with this requirement is not jurisdictional. Even if it were jurisdictional, this

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appeal was filed after the court announced the D&O but before it became effective as a judgment by operation of law 150 days later.

jurisdictional defect no longer existed when 150 days ran from entry of the order on the civil docket on August 28, 2016. This court has jurisdiction to consider the merits of this appeal.

Respectfully submitted this 15<sup>th</sup> day of November, 2016.

OFFICE OF THE ATTORNEY GENERAL  
**ELIZABETH BARRETT-ANDERSON**  
Attorney General

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/s/  
**R. Happy Rons**  
Assistant Attorney General

