

In the Matter of the Amendment
of the
HAWAI'I CIVIL TRAFFIC RULES

2006
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CLERK OF DISTRICT COURTS
STATE OF HAWAII
JULIA RIVARDO

ORDER AMENDING THE HAWAI'I CIVIL TRAFFIC

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED the Hawai'i Civil Traffic Rules, except for Rules 1, 5, 21, and 22) are amended, effective January 1, 2006, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 2. SCOPE AND PURPOSE OF RULES.

(a) **Scope of Rules.** These rules govern the practice and procedure in the District Courts of the State of Hawai'i for all cases involving civil [~~traffic~~] infractions except as otherwise provided by HRS Chapter 291D.

(b) **Purpose.** These rules shall be construed to secure the just, speedy and inexpensive determination of every [~~traffic~~] charged infraction.

Rule 3. DEFINITIONS.

(a) ~~Complaint and Summons.~~ The notice of traffic infraction issued to the defendant at the time of the parking or moving violation, whatever its title or denomination.]

~~(b)~~ **Court.** A [~~duly appointed~~] district court of the circuit and district in which the civil infraction occurred or to which venue has been transferred pursuant to Rule 11(d) of the HCTR [~~for per diem judge~~].

~~(c)~~ **(b) Default Judgment.** A judgment entered in favor of the State of Hawai'i when a defendant fails to answer or respond, either in person or in writing, to the [complaint] notice of infraction within [fifteen (15)] twenty-one (21) calendar days from the [issue] date [on] the notice of infraction was issued.

~~(d)~~ **(c) Defendant.** The person charged with a [~~traffic~~] civil infraction.

~~[(e)]~~ **(d) Hearing.** A proceeding conducted by the [district] court pursuant to HRS § 291D-8 at which a defendant appears in person or in writing and either contests the [traffic] civil infraction or admits the [traffic] civil infraction but offers an explanation to mitigate the monetary assessment ~~[or traffic points, or both,]~~ imposed.

(e) Infraction. Any violation of a statute, ordinance or rule, relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include imprisonment.

~~[(e)]~~ **(f) Issued.** A notice of infraction is issued when it is handed to a person or left upon a motor vehicle.

~~[(f)]~~ **(g) Judge.** A duly appointed full time [district] or per diem judge of the district court.

~~[(g)]~~ **(h) Monetary Sanctions [Assessment].** Any amount of monetary assessments, [of fines] costs, or fees, or any combination of them, imposed by the court ~~[pursuant to HRS § 291D-9]~~ for the defendant's commission of an infraction.

~~[(h)]~~ **(i) Notice of [Traffic] Infraction.** The ~~[complaint and summons, parking citation, or other]~~ form ~~[by which]~~ that is issued to the defendant [is notified of] at or after the time of the infraction and that notifies the defendant of the civil infraction(s) the defendant is charged with committing, whatever its title or denomination. The notice of [traffic] infraction is commonly called a ticket or citation.

~~[(f)]~~ **(j) Officer.** Police or other person authorized by law to issue a ~~[complaint and summons, parking citation, or other]~~ notice of [traffic] infraction.

~~[(f)]~~ **(k) Stopper.** A restriction placed: (1) on a defendant's driver's license [or motor vehicle registration] that prevents acquisition or renewal of a driver's license; or (2) on a motor vehicle's registration that prevents issuance, renewal, or transfer of registration or title to the motor vehicle.

~~[(k)]~~ **Traffic Infraction.** Any violation of statutes, ordinances, or rules, relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include imprisonment.

(l) Trial. An ~~[trial]~~ evidentiary proceeding, conducted by the [district] court pursuant to HRS § 291D-13, the Hawai'i Rules of Penal Procedure and Rules of the District Court held after a contested hearing in which judgment in favor of the State was entered.

(m) Written Statement. A statement submitted to the court in lieu of ~~[a personal appearance]~~ appearing in person at a hearing on the notice of infraction to explain mitigating circumstances or contest the [traffic] infraction; the defendant's answer to the notice of infraction.

Rule 4. APPLICABILITY OF RULES.

These rules apply to all civil [traffic] infraction proceedings, except as otherwise provided.

* * *

Rule 6. COMMENCEMENT OF ACTION.

An action is commenced by serving the notice of [traffic] infraction on the driver of a motor vehicle[,], or [in the case of a traffic infraction involving parking,] by affixing the notice conspicuously to the vehicle.

Rule 7. FILING THE [COMPLAINT] NOTICE OF INFRACTION.

The officer or some other person authorized by the issuing entity shall file the original of the notice of [traffic] infraction with, or transmit an electronic copy of the notice of [traffic] infraction to, the Traffic Violations Bureau or District Court [of] in the circuit where the alleged [traffic] infraction occurred, no later than [~~seven (7) working~~] ten (10) calendar days after the date the notice is issued.

Rule 8. ANSWER AND APPEARANCE.

(a) **Generally.** A defendant receiving a notice of [traffic] infraction shall answer within [~~fifteen (15)~~] twenty-one (21) calendar days of the date the notice of infraction was issued.

(b) **Nature and Content of Answer [Alternatives].** A defendant may answer the notice of [traffic] infraction by:

(1) Paying the total amount of monetary sanctions, consisting of the monetary assessment and costs and fees, if any, [fine] indicated on the notice of infraction[. The court will enter a judgment in favor of the State]; or

(2) Denying the [traffic] infraction and requesting a hearing to contest the allegations, then appearing in person at the hearing or submitting a written statement in lieu of appearing in person at the hearing; or

(3) Admitting the [traffic] infraction and requesting a hearing to explain any mitigating circumstances, then appearing in person at the hearing or submitting a written statement in lieu of appearing in person at the hearing.

(c) **No [~~Counterclaim or~~] Joinder or Counterclaim May Be Filed.** Proceedings pursuant to [~~this rule~~] these rules shall not be joined with any unrelated action, nor shall a defendant be allowed to file a counterclaim.

(d) **Method of Answer.** A defendant may answer a notice of ~~[traffic]~~ infraction either in person or in writing ~~[by mail]~~ within twenty-one (21) calendar days of the date the notice of infraction was issued . If the answer is mailed, it must be postmarked within ~~[fifteen (15)]~~ twenty-one (21) calendar days of the date ~~[on]~~ the notice of ~~[traffic]~~ infraction was issued.

(e) **Failure to Answer.** If the defendant fails to answer the notice of infraction either in person or in writing within ~~[fifteen(15)]~~ twenty-one (21) calendar days of the date the notice of infraction was issued, the court shall thereafter enter default judgment in favor of the State. If a defendant has tendered payment by personal check and the personal check is dishonored, said ~~[the]~~ defendant will be deemed not to have answered and default judgment shall be entered in favor of the State.

(f) **Appearance.**

(1) APPEARANCE AND REFUSAL. A defendant who appears before the court either in person or in writing and refuses to enter or fails to provide an answer to the notice of infraction that ~~[either]~~ admits~~[ting]~~, denies or admits~~[ting]~~ with an explanation of mitigating circumstances ~~[, or denying the commission of the traffic infraction]~~ shall be deemed to have denied commission of the infraction.

(2) APPEARANCE BY DEFENDANT THROUGH ATTORNEY. A defendant may ~~[also]~~ appear, answer and have judgment entered through an attorney~~[;]~~ who is duly licensed to practice law in the courts of the State of Hawaii. The attorney may ~~[shall either]~~ file an answer on behalf of the defendant within twenty-one (21) calendar days of the date the notice of infraction was issued and/or ~~[, or]~~ appear in person at any hearing scheduled on the infraction ~~[or shall file, at or before the time of appearance, a written answer on behalf of the defendant]~~. The court may, in its discretion, require the physical presence of the defendant at any stage of the proceeding not otherwise required by these rules.

(3) MANDATORY COURT APPEARANCES. The court may require a defendant to appear in person at a hearing in any case; however, the court shall require a defendant to appear ~~[personally]~~ in person for the hearing if:

(i) [if] the judgment will result in revocation or suspension of the defendant's driving privileges as provided for in HRS § 286-125; or

(ii) the infraction(s) involve/involves an accident resulting in personal injury or property damage; or

(iii) the infraction(s) is/are committed in the same course of conduct as a criminal offense for which the defendant is arrested or charged.

Rule 9. SUFFICIENCY OF THE NOTICE OF [TRAFFIC] INFRACTION.

(a) **Notice of [Traffic] Infraction.** The notice of [traffic] infraction is sufficient if it contains either a written description of or statutory designation ~~of~~ for the [traffic] infraction. If the defendant's signature is not obtained on the [traffic/criminal] notice of [traffic] infraction, the officer may indicate either "refused to sign," "unavailable" or "no signature for safety reasons." The lack of the defendant's signature for any reason does not void the [traffic/criminal] notice of [traffic] infraction. The defendant is deemed to have been notified of the [traffic] infraction when the [traffic/criminal] notice of [traffic] infraction is [served] issued.

(b) **Speed Measuring Device: Certification.**

(1) **GENERALLY.** This R[ule] 9(b) applies only to [contested] hearings in which the defendant denies or contests commission of the [for traffic] infraction [cases].

(2) **CERTIFICATE; FORM.** The officer may certify on any speeding notice of infraction [violation] that the testing device was in proper working order at the time the notice of [traffic] infraction was issued.

Rule 10. AMENDING THE NOTICE OF [TRAFFIC] INFRACTION.

The notice of [traffic] infraction may not be amended by the court or the clerk. ~~[at any time prior to judgment. All amendments to the notice of traffic infraction relate back to the issue date on the notice].~~ A notice of infraction that does not allege a valid infraction shall be dismissed.

Rule 11. REQUEST FOR HEARING; CONTINUANCE; CHANGE OF VENUE.

(a) **Request for Hearing.** A defendant may request a [contested or mitigation] hearing at which the defendant intends either to deny commission of the infraction(s) or admit commission of the infraction(s) but explain mitigating circumstances.

~~[(1) Traffic/Criminal. The date, time and place of the hearing shall be noted on the notice of traffic infraction.~~

~~[(2) Parking.]~~ If a defendant is not required to appear in person at a hearing on the infraction(s) but wishes to request a contested or mitigation hearing on the infraction(s), [A] the defendant shall complete, sign and date the Answer to Notice and return the Answer to Notice, along with a copy of the notice of infraction, and any written statement, within twenty-one (21) calendar days of the date the notice of infraction was issued. The Answer to Notice and any written statement may be submitted in person at any district court or by mail, postmarked within twenty-one (21) days of the date the notice of infraction was issued. If the preprinted envelope and Answer to Notice form was not provided to the defendant at

the time of issuance of the notice of infraction, the defendant may request a contested or mitigation hearing in person [, by telephone, by filling out the "Request for Hearing" box on the notice of traffic infraction,] or by delivering, mailing or faxing any other writing to the court which requests a contested or mitigation hearing; such request must be made or received within twenty-one (21) calendar days from the date the notice of infraction was issued.

(b) Notice of Hearing.

(1) INFRACTIONS OTHER THAN PARKING. If the defendant is required to appear in person at a hearing on the infraction(s), the date, time and place of the hearing shall be noted on the notice of infraction.

(2) CONTESTED OR MITIGATION HEARINGS – PARKING INFRACTIONS. If a hearing is timely requested, the court shall mail [the defendant] a notice of hearing to the defendant no later than thirty (30) calendar days from the [postmarked] date postmarked on [of] the request or, in the case of requests submitted in person at the court, no later than thirty (30) calendar days from the date of receipt of the request. The notice of hearing shall state the date, time and place of the hearing on the infraction.

(c) Continuance. A defendant may request that [continue] a hearing on the infraction be continued [in person, by telephone or by mail] by delivering, faxing or mailing a written request for continuance to the court no later than forty-eight (48) hours prior to the date and time of the hearing. If the request is granted by the court, [T]the continued hearing shall be scheduled for a date and time that is not more than ninety (90) calendar days from the date [on the original notice] of the originally scheduled hearing, unless otherwise agreed to by the defendant in writing.

(d) Change of Venue. A defendant may request a change [in] of venue [only] for hearings where no witnesses are subpoenaed. The venue change is limited to the circuit where the notice of [traffic] infraction was issued.

Rule 12. COMPANION CASES.

(a) [Generally] Docketing and Association. [If a traffic infraction and a criminal traffic case are based on the same conduct or are otherwise related, may be the case shall be consolidated at any point in the proceedings by motion of any party, or by the courts' own motion.] A traffic infraction that involves an accident resulting in personal injury or property damage and that is committed in the same course of conduct as a criminal offense for which the defendant is arrested or charged shall be docketed as a civil infraction, but shall be associated with the separately docketed criminal offense. If a civil infraction hearing is requested, it shall be heard at trial with the criminal offense under the Hawai'i Rules of Penal Procedure.

(b) Procedure. At the trial of ~~[both] the [criminal traffic case and the traffic infraction]~~ associated cases, the ~~[rules governing criminal cases]~~ Hawai'i Rules of Penal Procedure shall apply, except that, if the defendant fails to appear, default judgment shall be entered on the civil infraction and the criminal offense shall be disposed separately in accordance with the Hawai'i Rules of Penal Procedure; and provided the defendant may admit and pay the civil infraction prior to trial. ~~[However, if the companion criminal traffic case is disposed of prior to trial, the remaining traffic infraction shall be processed in accordance with these rules.]~~

Rule 13. SUBPOENA.

For a contested ~~[case]~~ hearing, the court may, upon the request of the defendant or its own initiative, compel the attendance of the officer who issued the notice of ~~[traffic]~~ infraction and other witnesses. Requests for subpoenas must be made at least ten (10) calendar days before the scheduled hearing on the infraction. ~~If [the defendant requested issuance of the subpoena]~~ a subpoena is issued pursuant to defendant's request, the defendant is responsible for its service and for payment of the service, mileage and witness fees.

Rule 14. CONDUCT OF THE HEARING{S} ON THE INFRACTION.

(a) Generally. The court shall conduct all hearings in accordance with applicable law.

(b) Procedure. The procedure for all hearings shall be informal. A prosecutor will not be present and witnesses will not be required.

(c) Standard of Proof. The standard of proof applied shall be a preponderance of the evidence.

(d) Appearance. A defendant may appear for a contested or mitigation hearing either in person or by written statement.

(e) Written Statement. In lieu of appearing in person for a contested or mitigation hearing, a [A] defendant may [appear by] submit[ting] a written statement [for either a mitigation or contested hearing]. The court shall review the written statement, determine whether the defendant is contesting commission of the infraction or requesting mitigation [the type of hearing], enter judgment, and determine the amount of the monetary assessment, costs and fees [and points], if any.

(f) Evidence. Evidence shall consist of the notice of ~~[traffic]~~ infraction, applicable police reports or other written statements by the issuing officer, and any evidence or written statement submitted by the defendant. The judge shall not be bound by rules of evidence, except provisions relating to privileged communications.

(g) Failure to Appear. If a defendant fails to appear for a contested or mitigation hearing, either in person or by written statement, the court shall enter default judgment in favor of the State.

Rule 15. DEFAULT JUDGMENT AND STOPPER.

(a) **Entry of Judgment.** A default judgment may be entered ~~if~~ when the defendant fails to answer or respond to the notice of ~~traffic~~ infraction within ~~fifteen (15)~~ twenty-one (21) calendar days from the date the notice of infraction was issued, [after it is served] or fails to appear at any scheduled hearing. Additional notice to the defendant before entry of default judgment is not required.

(b) **Notice of Entry of Default Judgment.** If default judgment is entered, the court shall mail a notice of entry of default judgment to the defendant. The notice shall state that payment of the judgment must be made within thirty (30) calendar days of the date of the notice of entry of default judgment and that a stopper will be placed on the defendant's vehicle registration for parking infractions or on the defendant's driver's license for moving infractions if payment is not made. The notice of entry of default judgment shall explain the procedure for requesting that the ~~setting aside a~~ default judgment be set aside.

(c) **Stopper.** If payment is not made within thirty (30) days, the county director of finance will be notified and a stopper will be placed:

(1) On the defendant's driver's license for moving ~~violations~~ infractions ~~[Further, the defendant will not be permitted to renew his or her driver's license without obtaining a clearance];~~ or

(2) On the ~~defendant's~~ vehicle registration and title for parking ~~violations~~ infractions. ~~[Further, the registered owner will not be permitted to renew his or her vehicle registration without obtaining a clearance.]~~

Rule 16. JUDGMENT.

(a) **In Favor of the State.** If the court determines that an ~~traffic~~ infraction has been committed, judgment shall be entered in favor of the State. The court may impose ~~assess~~ a monetary assessment, ~~which may include a fine and~~ court costs, and fees ~~along with points~~, if any. The ~~fine~~ monetary assessment cannot exceed the maximum monetary assessment ~~fine~~ specified by law ~~in the statute~~. For purposes of this rule, submission of payment before judgment shall be deemed a confession of judgment and notation of payment on the electronic docket shall be deemed entry and satisfaction of the judgment.

(b) **In Favor of the Defendant.** If the court determines that an ~~traffic~~ infraction has not been committed, the court shall dismiss the ~~traffic~~ infraction with prejudice. The dismissal shall be entered in the court records.

(c) **Failure to Satisfy Judgment.** If the defendant fails to satisfy a judgment entered against the defendant, the court shall ~~issue~~ order a stopper in accordance with Rule 15(c) of the HCTR, and the administrative director of the court or the administrative director's designee may undertake collection measures.

(d) **Notice of Decision and Judgment.** If ~~[a written statement is submitted]~~ the defendant timely answers the notice of infraction in writing, the court shall review the written statement and mail [the defendant] a notice of decision and judgment to the defendant within thirty (30) calendar days of the postmarked date of the answer or within thirty (30) calendar days of the date of the court's receipt of the answer. The notice shall state the decision of the court as well as the monetary assessment, costs and fees, if any, to be paid ~~[and points assessed, if any]~~.

Rule 17. ~~[DEFERRED PAYMENT AND] COMMUNITY SERVICE IN LIEU OF PAYMENT OF MONETARY ASSESSMENT.~~

~~[(a) —~~ **Deferred Payment.** ~~The court may allow deferred payments if the defendant claims an inability to pay a monetary assessment.~~

~~(b) —~~ **Community Service.** ~~The court may permit the defendant to perform [allow] community service work in lieu of payment of the monetary assessment [fine]. Community service may be ordered at the defendant's request if the court finds that the defendant does not have [claims an inability] the ability to pay the monetary assessment. Community service may not be ordered in lieu of payment of costs and fees.~~

Rule 18. POST-JUDGMENT RELIEF.

(a) **Post-~~[Hearing]~~Judgment Motion.** No post-~~[hearing]~~judgment request for relief will be allowed except for a motion to set aside default judgment, motion to convert ~~[fine]~~ monetary assessment to community service, motion to amend judgment, or a request for trial after a contested hearing.

(b) **Motion to Set Aside Default Judgment.** A default judgment may not be set aside after ninety (90) days of the notice of entry of default judgment unless the court finds [there is] an exceptional circumstance.

(1) **GENERALLY.** The court may set aside a default judgment ~~[entered for failure to appear,]~~ for good cause shown~~[,]~~ and upon terms the court deems just. ~~[The court shall set aside a] A default judgment [entered for failure to appear,] may be set aside if [it appears to] the court finds that the [named] defendant was not served a copy of the [complaint] notice of infraction, if the failure to timely answer was due to the defendant's [upon proof of] military deployment, or for any other reason where necessary to prevent manifest injustice.~~

(2) **PROCEDURE.** A motion to set aside default judgment must be made in writing and an appearance bond equal to the amount of the ~~[fine]~~ judgment, together with any delinquency charges, must be posted.

(i) Consolidated Hearing Required. The hearing on the motion to set aside default judgment, and the hearing ~~up~~ on the notice of ~~traffic~~ infraction, if any, shall be scheduled together ~~on the hearing calendar~~. If the motion to set aside default judgment is granted, the hearing on the notice of infraction will commence immediately. If the motion to set aside default judgment is denied, there shall be no hearing on the notice of infraction and the appearance bond shall be applied to satisfy the judgment and any delinquent charges.

(ii) Separate Written Statements Required. If the defendant chooses to submit a written statement in lieu of appearing in person at a hearing on the motion to set aside default judgment ~~appear in writing~~, separate written statements must be submitted for the motion to set aside default judgment and for the notice of ~~traffic~~ infraction. The court shall notify the defendant in writing of its decision on the motion to set aside default judgment, and if applicable, its decision on the notice of infraction ~~in writing~~, within thirty (30) calendar days after the date the motion was ~~filed~~ heard.

(c) **Motion to Convert ~~Fine~~ Monetary Assessment to Community Service.** A motion to convert a ~~fine~~ monetary assessment to community service may be filed at any time before a judgment is sent for collection.

(d) **Motion to Amend Judgment.** A motion to amend the judgment to correct clerical mistakes may be filed at any time before a judgment is sent for collection. The court may correct clerical errors at any time, with or without a motion by the defendant.

~~(e) Request for Trial. A defendant may request a trial only after a contested hearing. The request may be made at the conclusion of the hearing and must be made not later than thirty days after the date judgment is entered.~~

Rule 19. TRIAL.

(a) **Request for Trial.** A defendant may request a trial only after a contested hearing. The request may be made at the conclusion of the contested hearing and must be made not later than thirty (30) calendar days after the date judgment is entered. A request for trial must be made in writing unless the defendant's request for trial is made on the record, immediately upon conclusion of the contested hearing, while the defendant is present in court. There is no right to trial after a mitigation hearing.

(b) **~~For~~ After Contested Hearings.** ~~[A defendant's request for trial must be made within thirty days after a contested hearing judgment is entered.]~~ If the defendant requests a trial ~~request is made~~ at the conclusion of the contested hearing, the court shall set a trial date forthwith. If the request is made in writing within thirty (30) days after entry of judgment, the court shall set a trial date as soon as is practicable. If a trial is requested and the defendant appears at the scheduled trial, the court shall vacate the judgment entered as a result of the contested hearing.

~~{There is no right to a trial after a mitigation hearing.}~~ If the defendant fails to appear at the requested trial, the judgment in favor of the State shall stand.

~~{(b)}~~**(c)** **Procedure.** Trial shall be held pursuant to HRS § 291D-13, the Hawai'i Rules of Penal Procedure, Rules of the District Court, and Hawai'i Rules of Evidence. The prosecutor shall be present at trial. Prior to the commencement of trial, the prosecutor shall formally state the infraction(s) and the defendant shall contest commission of the infraction(s). ~~{The arraignment and plea shall be held at the time of trial.}~~ The prosecutor ~~{will be present at the trial and}~~ must prove the infraction(s) [charge] by proof beyond a reasonable doubt.

~~{(c)}~~**(d)** **Appeals.** Appeals from judgments entered after a trial may be taken in the manner provided for appeals from district court ~~{criminal}~~ civil judgments.

Rule 20. ASSESSMENT OF SERVICE CHARGE.

(a) Dishonored Instruments. The court shall assess and collect a service charge for any check, draft, or other negotiable instrument dishonored for any reason. The court shall require payment of the service charge in cash or by certified or cashier's check or by bank or postal money order. The service charge shall be deposited in the State General Fund unless otherwise governed by statute.

(b) Delinquency Charge. The court may assess a delinquent charge of

- (i) \$10 upon any judgment of \$500 or less if payment of the judgment is received more than ninety (90) calendar days after entry of the judgment.
- (ii) \$25 upon any judgment of more than \$500 if payment of the judgment is received more than 180 calendar days after entry of the judgment.

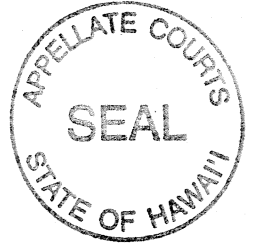
(c) Judgments; Collection Referral. Each judgment shall include all court-ordered ~~{penalties, fines/}~~ monetary assessments, ~~{restitution, sanctions, and court}~~ costs, fees and delinquency charges, including juvenile monetary assessments.

(i) *For Judgments of \$500 or Less.* The ~~{Clerk or Court Administrator}~~ administrative director of the courts or the administrative director's designee shall refer for collection judgments of \$500 or less that have not been paid within ninety (90) calendar days after entry without further order of the court.

(ii) *For Judgments of More Than \$500.* The ~~{Clerk or Court Administrator}~~ administrative director of the courts or the administrative director's designee shall refer for collection judgments of more than \$500 that have not been paid within 180 calendar days after entry without further order of the court.

(d) **Other Actions to Enforce.** Nothing herein shall affect the court's ability to take such other action as necessary to enforce its judgment.

DATED: Honolulu, Hawai'i, December 8, 2005.



[Handwritten signature]

Steven K. Harrison

Pamela A. Takaiura

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Pamela E. Duffy, Jr.