

CLERK, APPELLATE COURTS
STATE OF HAWAII
E.M. RIMANDO

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In the Matter of the Amendment
of the
Hawai'i Probate Rules

ORDER AMENDING THE HAWAI'I PROBATE RULES

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

IT IS HEREBY ORDERED that the following amendments are made to the Hawai'i Probate Rules, effective *nunc pro tunc* January 1, 2005, as follows (deleted material is bracketed and stricken, new material is underlined):

1. Commentary to Probate Rule 14 is amended as follows:

COMMENTARY:

~~[This rule would allow, for instance, guardianship and probate hearings concerning the same individual to be consolidated for hearings. In the First Circuit, it is anticipated that the probate court will not grant any petitions for consolidation of a guardianship of the person and a guardianship of the property, because of the strict delineation between the jurisdiction, procedures, and expertise of the circuit and family courts. However, the First Circuit probate court would consider consolidation if the matter is to be consolidated and heard by the family court.]~~

Under prior law, the family court had exclusive jurisdiction over all guardianships of the persons. Under the new guardianship statute, specifically HRS § 560:5-106, the probate court now has concurrent jurisdiction over guardianships of adult persons (but not

minors) where there is also a conservatorship proceeding.

New Rule 100(b) provides that a party may file a single petition in probate court to initiate a guardianship of an adult person and a conservatorship of the same adult person. It is anticipated that an action to initiate a guardianship for an adult person but not a conservatorship for the same adult person will be filed in family court and that an action to initiate a conservatorship for an adult person but not a guardianship for the same adult person will be filed in probate court. If separate proceedings are filed (or for those matters filed before January 1, 2005 for guardianship of the person for an adult and guardianship of the property for the same adult), then the court may permit consolidation of guardianship and conservatorship proceedings concerning the same adult person in probate court.

2. Probate Rule 100 and the Commentary are amended as follows:

RULE 100. CASE NUMBERS.

(a) Except as provided in subsection (b), ~~The~~ the clerk of the court shall assign a ~~G.~~ C. No. to all proceedings for ~~[guardianship of the property]~~ conservatorship. A person preparing a pleading shall indicate the ~~G.~~ C. No. and immediately below the ~~G.~~ C. No., in parentheses, a notation of whether the matter is for Protective Arrangement, ~~[Guardian]~~ Conservator of Minor, ~~[Guardian]~~ Conservator of Adult, or Small ~~[Guardianship]~~ Conservatorship.

(b) **Initial Protective and Guardianship Proceedings.** The party may file one petition for a protective proceeding and for a guardianship of the same adult, which petition shall be assigned a CG. No. A person preparing a pleading shall indicate the CG. No. and immediately below the CG. No. in parentheses, a notation that the matter is for Conservator and Guardian of Adult. The

petition shall also comply with the notice requirements applicable to both protective proceedings and guardianship proceedings. The petition shall also include all of the information required in HRS §§ 560:5-304 and 560:5-403.

COMMENTARY:

1995 Commentary: This rule brings the guardianship practice in line with the probate practice under Rule 50, in that all guardianship of the property proceedings, no matter what the jurisdictional procedural amount, will have one case number. Thus, if a small guardianship grows beyond the clerk's jurisdiction, or a regular guardianship is depleted to the point of falling within the small guardianships jurisdiction, change of the jurisdictional procedure can be done simply by a petition and order to note the changed circumstances, and a new proceeding need not be initiated.

Indicating the nature of the proceeding below the case number will help clarify the context of the guardianship and the rules to be applied. A guardianship of a minor terminates automatically upon the minor's attaining the age of majority or emancipation unless extended by the court. If an incapacitated minor is under guardianship, then upon attaining majority, the guardian should file a petition to continue the guardianship as one for an adult.

2004 Commentary: Under HRS § 560:5-106, the probate court has exclusive jurisdiction over protective proceedings and concurrent jurisdiction with family court over guardianships of adults in cases where there is also a protective proceeding concerning the adult. Changing "G. No." to "C. No." reflects terminology in Article V of Chapter 560, effective January 1, 2005, where "guardian" is used instead of "guardian of the person" and "conservator" instead of "guardian of the property." In addition, H.R.S. §§ 571-14 and 603-21.5 were amended to provide the probate court concurrent

jurisdiction with family court over adult guardianships, effective January 1, 2005, consistent with subject matter jurisdiction provisions in Article V of the Hawaii Probate Code (previously H.R.S § 560:5-102; as of January 1, 2005, H.R.S § 560:5-106). The "CG. No." case number is for cases where guardianship and conservatorship are sought for the same adult person at the outset of the case. Guardianship (formerly "guardianship of the person") proceedings for an adult person initiated in the Family Court (in cases bearing an "FC-G" case number designation) and conservatorship (formerly "guardianship of the property") proceedings for the same adult person initiated in probate court (in cases initiated before the Hawai'i Probate Rules were adopted, bearing an "SP" number, or in cases initiated under the Probate Rules effective prior to January 1, 2005, bearing a "G. No." or in cases initiated on or after January 1, 2005, bearing a "C. No."), if consolidated in the probate court (as permitted effective January 1, 2005), will retain both separate case numbers and will not be assigned a "CG." number.

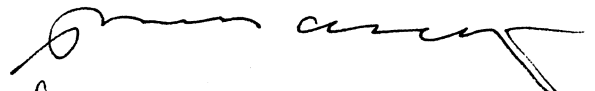
To the extent practicable, all Hawai'i Probate Rules and administrative orders that presently apply to "guardianship of the property" (G. No.) proceedings shall also apply to "conservatorship" and "conservatorship and guardianship" (C. No. and CG. No.) proceedings.

DATED: Honolulu, Hawai'i, February 16, 2005.



Steven Levinson

Aunna C. Nakayama



James E. Duggan Jr.