IN THE SUPREME COURT OF THE STATE OF HAWAI I

In the Matter of the Amendment

of the

HAWAI I FAMILY COURT RULES

ORDER AMENDING HAWAI I FAMILY COURT RULES

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

IT IS HEREBY ORDERED that Rules 26 through 37, 45.1, 54.1, 68, and 72 of the Hawai i Family Court Rules are amended, effective July 1, 2006, as specifically as set forth below (deleted material is bracketed and stricken; new material is underscored):

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY

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(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, or otherwise protected by law, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the [~~information sought~~] discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii) and Rule 45.1 in regards to minor child.

~~Subject to the specific limitations on interrogatories contained in Rule 30(b) of the Rules of the Circuit Courts, the frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or it is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party~~

~~seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).~~

(2) [~~(RESERVED.)~~] LIMITATIONS. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) (RESERVED.)

~~(3)~~ (4) TRIAL PREPARATION: MATERIALS. [~~Subject to the provisions of subdivision (b)(4) of this rule, a~~] A party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a

stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

~~(4)~~(5) TRIAL PREPARATION: EXPERTS. [~~Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:~~

~~(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(c) of this rule, concerning fees and expenses as the court may deem appropriate.~~]

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial.

(B) A party may, through interrogatories and/or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under [~~subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule~~] this subdivision; and (ii) [~~with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and~~] with respect to discovery obtained under subdivision [~~(b)(4)(B)~~] (b)(5)(B) of this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and

for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be [~~disclosed~~] revealed or be [~~disclosed~~] revealed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

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(e) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

. . . .

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party [~~obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment~~] learns that (A) the response is in some material respect incomplete or incorrect or (B) the response omits information which if disclosed could lead to the discovery of additional admissible evidence.

* * *

(g) Signing of discovery requests, responses, and objections.

(1) Every discovery request, [~~for discovery or~~] response, or objection [~~thereto~~] made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. [~~A~~] An unrepresented party [~~who is not represented by an attorney~~] shall sign the request, response, or objection

and state the party's address. The signature of the attorney or party constitutes a certification [~~that the signer has read the request, response, or objection, and~~] that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, [~~it~~] the request, response, or objection is:

[~~(1)~~](A) Consistent with these rules and warranted by existing law or good faith argument for the extension, modification, or reversal of existing law;

[~~(2)~~] (B) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

[~~(3)~~] (C) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

COMMENT:

The 2006 amendments to Rules 26 and 28 to 37 of the Hawai i Family Court Rules track most of the 2004 amendments to their counterparts in the Hawai i Rules of Civil Procedure. Rule 27 of the Hawai i Family Court Rules was not amended because its Hawai i Rules of Civil Procedure counterpart is broader than necessary for Family Court and the current Rule 27 of the Family Court Rules already contains gender neutral language.

In proposing the amendments to Rule 26(b)(1) of the Hawai i Family Court Rules, the limitations of Rule 45.1 of the Hawai i Family Court Rules, regarding child witnesses, were applied to the general language of the corresponding language in Rule 26(b)(1) of the Hawai i Rules of Civil Procedure.

Rule 26(b)(3) of the Hawai i Rules of Civil Procedure, regarding insurance agreements, was not adopted because it is not applicable to Family Court. Subsection 26(b)(3) is reserved to allow for future amendments and to match the numbering of the Hawai i Rules of Civil Procedure.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

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(b) In foreign countries. [~~In a foreign country, depositions~~] Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or [~~(1)~~] (3) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or [~~(2)~~] (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony[~~, or (3) pursuant to a letter rogatory~~]. A commission or a letter [~~rogatory~~] of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter [~~rogatory~~] of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter [~~rogatory~~] of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be [~~take neither~~] taken either by name or descriptive title. A letter [~~rogatory~~] of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter [~~rogatory~~] of request need not be excluded merely [~~for the reason that~~] because it is not verbatim transcript, [~~or that~~] because the testimony was not taken under oath, or [~~for~~] because of any similar departure from the requirements for depositions taken within the United States under these rules.

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RULE 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE

Unless [~~the court orders~~] otherwise directed by the court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify [~~the~~] other procedures [~~provided by these rules for other methods of~~] governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34 and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

(a) When depositions may be taken; when leave required.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only (A) if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required [~~(1)~~] (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or [~~(2)~~] (ii) if special notice is given as provided in subdivision [~~(b)~~] (a)(2)(c) of this rule[~~.~~], or (B) as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45. [~~The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~]

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) Aproposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) The person to be examined already has been deposed in the case; or

(C) A plaintiff seeks to take a deposition before the expiration of the 30 day period specified in Rule 30(a)(1)(A) unless the notice contains a certification, with supporting facts, that the person to be examined is about to leave the State or the United States, or is bound on a voyage to sea, and will be unavailable for examination unless deposed before that time.

(b) Notice of examination: General requirements; [~~special notice; non-stenographic~~] method of recording; production of documents and things; deposition of organization; deposition by telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

[~~(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State or is about to go out of the United States, or is bound on~~

~~a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.~~

~~If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.~~

~~(3) The court may for cause shown enlarge or shorten the time for taking the deposition.~~

~~(4) Subject to the provisions of Rule 2 of the Rules Governing Court Reporting, the parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subdivision (c), any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.~~]

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit

of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

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(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone[~~.~~] or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), [~~and 45(d),~~] a deposition taken by [~~telephone~~] such means is taken in the circuit and at the place where the deponent is to answer questions [~~propounded to the deponent~~].

(8) The notice shall inform the deponent, in plain language, of the requirements of subdivision (e) of this rule.

(c) Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Hawai`i Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other [~~means ordered in accordance with~~] method authorized by subdivision [~~(b)(4)~~] (b)(2) of this rule. [~~If requested by one of the parties, the testimony shall be transcribed.~~]

All objections made at the time of the examination to the qualifications of the officer taking the deposition, [~~or~~] to the manner of taking it, [~~or~~] to the evidence presented, [~~or~~] to the conduct of any party, [~~and~~] or to any other [~~objection to~~] aspect of the proceedings[~~,~~] shall be noted by the officer upon the record of the deposition[~~.~~] ; [~~Evidence objected to shall be~~] but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and duration; motion to terminate or limit examination.

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under rule 30(d)(4).

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must

allow additional time consistently with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during [~~the taking of~~] a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the circuit where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition [~~shall~~] must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) [~~Submission to~~] Review by witness; changes; signing. [~~When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.~~]

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and [~~retention~~] delivery by officer; exhibits; copies.[~~; filing and notice of filing.~~]

(1) The officer [~~shall~~] must certify [~~on the deposition~~] that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, [~~The~~] the officer [~~shall~~] must [~~then~~] securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)[~~:~~]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. [~~The officer shall retain the deposition and shall be responsible for its safekeeping until the officer files it pursuant to subdivision (f)(3) of this rule, or, if it is not filed, until the final disposition of the case including any appeals; provided that an officer who has taken a deposition outside this state shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing; and further provided that if the officer discontinues the occupation of taking depositions by reason of death or otherwise, the officer or agent of the officer shall promptly file any depositions with the court.~~]

Documents and things produced for inspection during the examination of the witness[~~, shall~~] must, upon the request of a party, be marked for identification and annexed to [~~and returned with~~] the deposition[~~;~~] and may be inspected and copied by any party, except that [~~(A)~~] if the person producing the materials [~~may substitute copies to be marked for identification,~~] desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by [~~comparisons~~] comparison with the originals, [~~and~~] or (B) [~~if the person producing the materials requests their return, the officer shall mark them, give~~] offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, [~~and return them to the person producing them, and~~] in which event the materials may then be used in the same manner as if annexed to [~~and returned with~~] the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to [~~the officer or~~] the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) [~~A deposition shall be filed when submitted pursuant to this rule for use on a motion or at trial. For use on a motion, whether in~~

~~support or opposition, a deposition may be filed concurrently with or after the filing of the motion. For use at trial, a previously unfiled deposition which is intended to be offered in evidence may be filed on or after the 20th day preceding the scheduled commencement of trial. In addition the court may at anytime, on ex parte request or sua sponte, order the filing of a deposition.~~

~~When any party seeks to submit a deposition pursuant to this rule, the officer who took the deposition shall upon the party's request promptly file the deposition, or, if time permits, send it by registered or certified mail to the clerk of the court for filing.~~] The party [~~who requested filing~~] taking the deposition shall give prompt notice of [~~the~~] its filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses.

. . . .

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon [~~that party~~] the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

COMMENT:

Because the newly revised Rule 30(e) of the Hawai i Family Court Rules shifts the burden on the deponent to request a review of the transcript or recording as well as the burden to prepare a signed statement of changes within 30 days, Rule 30(b)(8), a new section, was drafted to require notice of these provisions in the written Notice of Examination.

RULE 31. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving questions; notice.

(1) After commencement of the action, [~~any~~] a party may take the testimony of any person, including a party, by deposition upon written questions[~~.~~] without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. [~~The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.~~]

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants; or

(B) The person to be examined has already been deposed in the case.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating [~~(1)~~] (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and [~~(2)~~] (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within [~~10~~] 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within [~~10~~] 7 days after being served with cross questions, a party may serve direct questions upon all other parties. Within [~~10~~] 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and [~~seal~~] file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) [Retention; Filing;] Notice of filing. [~~Retention of the deposition by the officer, filing, and notice of filing shall be governed by the provisions of Rule 30(f).~~] When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

. . . .

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness resides on an island other than that of the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(c) shall not be used against a party who demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition; nor shall a deposition be used against a party who, having received less that 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

. . . .

(b) Pretrial disclosures. A party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment; the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony. Unless otherwise directed by the court, this information must be disclosed at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list of disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party, and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of that testimony. Objections not so disclosed, other than objections under Rules 402 and 403 of the Hawai`i Rules of Evidence, are waived unless excused by the court for good cause. These disclosures must be made in writing, signed, and served.

[~~**(b)**~~] **(c) Objections to admissibility.** Subject to the provisions of Rule 28(b) and subdivision [~~(d)(3)~~] (e) (3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

[~~**(c) (Deleted)**~~] **(d) Form of presentation.** Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered.

[~~**(d)**~~] **(e) Effect of errors and irregularities in depositions.**

(1) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to

be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) AS TO TAKING OF DEPOSITION.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind that might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

RULE 33. INTERROGATORIES TO PARTIES

(a) Availability~~[; procedures for use.]~~ Without leave of court or written stipulation, [~~Any~~] any party may serve upon any other party written interrogatories, not exceeding 60 in number, counting any subparts or subquestions as individual questions, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2).

(b) Answers and objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection ~~[shall be stated in lieu of an answer~~] and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. [~~The court may allow a~~] A shorter or longer time[~~,~~] may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

[~~(b)~~] (c) Scope; use at trial. Interrogatories may relate to any matters that can be inquired into under [~~Rule 26(b)~~] Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

[~~(c)~~] (d) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents

(including writings, drawings, graphs, charts, photographs, [~~phono-records~~] phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of Rule 26(b) and that are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth, either by individual item or by category, the items to be inspected [~~either by individual item or by category,~~] and describe each [~~item and category~~] with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. [~~The court may allow a~~] A shorter or longer time[~~.~~] may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified[~~.~~] and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons not parties. [~~This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.~~] A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) Order for examination. When the mental or physical condition (including the blood group) of a party, or of a person in the

custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a [~~physician, or mental examination by a physician or psychologist~~] suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of [~~examining physician or psychologist~~] examiner. (1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the [~~requestor~~] requesting party a copy of a detailed written report of the [~~examining physician or psychologist~~] examiner setting out the [~~physician's or psychologist's~~] examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that [~~such~~] the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if [~~a physician or psychologist~~] an examiner fails or refuses to make a report, the court may exclude the [~~physician's or psychologist's~~] examiner's testimony if offered at [~~the~~] trial.

. . . .

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an [~~examining physician or psychologist~~] examiner or the taking of a deposition of the [~~physician or psychologist~~] examiner in accordance with the provisions of any other rule.

[~~**(c) Definitions.** For the purpose of this rule, a psychologist is a psychologist licensed or certified in this State.~~]

RULE 36. REQUESTS FOR ADMISSION

(a) Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of [~~Rule 26(b)~~] Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the

action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow[~~,~~] or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

. . . .

RULE 37. FAILURE TO MAKE DISCOVERY; SANCTIONS

(a) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the circuit where the deposition is being taken. An application for an order to a [~~deponent~~] person who is not

a party shall be made to the court in the circuit where the deposition is being, or is to be, taken.

(2) MOTION. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the infomation or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

[~~If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).~~]

(3) EVASIVE OR INCOMPLETE ANSWER OR RESPONSE. For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) [~~AWARD OF~~] EXPENSES [~~OF MOTION~~] AND SANCTIONS.

(A) If the motion is granted[~~,~~] or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity [~~for hearing~~] to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in [~~obtaining the order,~~] making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, o r that the [~~opposition to the motion~~] opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity [~~for hearing~~] to be heard, require the moving party or the attorney [~~advising~~] filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses

incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

. . . .

(2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to disclose; false or misleading disclosure; [~~expenses on failure~~] refusal to admit.

(1) A party that without substantial justification fails to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses,

including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C).

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the party the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that [~~(1)~~] (A) the request was held objectionable pursuant to Rule 36(a), or [~~(2)~~] (B) the admission sought was of no substantial importance, or [~~(3)~~] (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or [~~(4)~~] (D) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under [~~paragraphs~~] subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has [~~applied~~] a pending motion for a protective order as provided by Rule 26(c).

. . . .

RULE 45.1. TESTIMONY OF MINOR CHILD

[~~Unless waived, prior~~] Prior approval must be obtained from the court before any child is summoned to appear as a witness[~~;~~] so that the court may determine whether to allow the testimony of the child and the form and manner in which the child's testimony will be permitted. ~~[In a divorce, paternity or contested adoption where custody is at issue, the~~

~~testimony of any minor child shall be allowed only with the approval of the court.~~] The court may appoint a guardian ad litem pursuant to HRS section 551-2 before allowing such testimony.

RULE 54.1. PERIODIC PAYMENTS

Provisions for periodic payments of alimony and/or child support shall be set forth specifically in the judgment or order providing for the same to be paid. Provisions for alimony shall state whether such payments are to be made directly to the recipient or through the chief clerk of a circuit court, or through the Child Support Enforcement Agency when there is a concurrent child support order. A provision for child support shall state that it is payable through the Child Support Enforcement Agency and pursuant to an order for income assignment [~~unless there is no assignable income.~~], except that provisions for direct payment of child support may be made pursuant to HRS section 576D-10. All orders for periodic payment shall state the commencement date, and the date or dates of each month and year on which such payments are to be made. Provisions for periodic payments of alimony for an indefinite period may be approved but shall be made subject to further order of the court. Provisions for periodic payments of alimony for a definite period may be approved but shall be for a definite period of time or until further order of the court, whichever occurs sooner.

COMMENT:

This rule sets forth the requirements in child support orders. At the time it was promulgated, the statute required that all such orders be paid through the Child Support Enforcement Agency. Subsequently, Haw. Rev. Stat. § 576D-10(b) through (i) was amended to allow direct payments subject to certain conditions. This rule was amended to be consistent with statutory amendments.

RULE 68. OFFER OF SETTLEMENT

At any time more than 20 days before any contested hearing held pursuant to HRS sections 571-11 to 14 (excluding law violations, [~~and~~] criminal matters, and child protection matters) is scheduled to begin, any party may serve upon the adverse party an offer to allow a judgment to be entered to the effect specified in the offer. Such offer may be made as to all or some of the issues, such as custody and visitation. Such offer shall not be filed with the court, unless it is accepted. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, any party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall treat those issues as uncontested. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible, except in an proceeding to determine costs and attorney's fees. If the judgment in its entirety

finally obtained by the offeree is patently not more favorable than the offer, the offeree must pay the costs, including reasonable attorney's fees incurred after the making of the offer, unless the court shall specifically determine that such would be inequitable in accordance with the provisions of HRS section 580-47 or other applicable statutes, as amended.

RULE 72. APPEAL TO THE FAMILY COURT

* * *

(l) Briefs.

(1) BRIEFING SCHEDULES AND SCHEDULING OF ARGUMENT DATES. The court shall issue a briefing schedule which [~~shall include an oral argument date~~] will inform parties that oral argument will be scheduled upon request.

* * *

DATED: Honolulu, Hawai i, March 29, 2006.