

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Amendment
of the
HAWAII FAMILY COURT RULES

ORDER ADOPTING RULE 5.1 AND AMENDING RULES 19A
AND 59 OF THE HAWAII FAMILY COURT RULES

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

IT IS HEREBY ORDERED that Rule 5.1 is adopted, Interim Rule 19A is repealed, and Rule 59 is amended of the Hawaii Family Court Rules, effective July 1, 2008, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 5.1. NOTICE IN PROCEEDINGS RELATING TO CHILD IN FOSTER CARE

In any judicial proceeding held with respect to a child in foster care or pursuant to Chapter 587 of the Hawaii Revised Statutes, the foster parents, pre-adoptive parents, and/or relative caregivers of the child, or their attorney, shall be duly notified in writing of the proceeding. The petitioning party shall bear the burden of preparing and serving notice. Notice shall include the name of the court and names of the parties, as well as the date, time, location, and nature of the proceeding. Notice shall be served at least 48 hours before the scheduled proceeding, subject to a shortening of time when a proceeding is set within a shorter time frame. If notice is not served, no proceeding shall be held except as ordered by the court upon good cause shown. Failure to provide notice as required herein may result in sanctions pursuant to Rule 89(b).

~~[Rule 19A. INTERIM RULE REQUIRING JOINDER AND NOTICE.~~

~~———— In child protective proceedings, (1) foster parents shall be made parties to the action and (2) foster parents, pre-adoptive parents, and relative care givers shall be given at least 48 hours notice of any proceeding with respect to the child.]~~

Rule 59. NEW TRIALS; RECONSIDERATION OR AMENDMENT OF JUDGMENTS AND ORDERS.

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(e) Motion to reconsider, alter or amend a judgment or order.

Except as otherwise provided by HRS section 571-54 regarding motions for reconsideration in proceedings based upon HRS sections 571-11(1), (2), or (6), a motion to reconsider, alter or amend [the] a judgment or order is not required but may [shall] be filed no[t] later than 10 days after entry of the judgment or order[- Excepting motions for reconsideration from proceedings based upon HRS sections 571-11(1), (2), (6) and (9), all motions for reconsideration] and shall be a non-hearing motion[s. At its discretion], except that the court in its discretion may set [the] any matter for [a] hearing. Responsive pleadings to a motion for reconsideration shall be filed no later than 10 days after filing of the motion to reconsider, alter or amend the judgment or order.

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COMMENTS:

Rule 59(e) of the Hawai i Family Court Rules sets forth the requirements for motions to reconsider, alter or amend a judgment or order. At the time this rule was originally promulgated, the statute required that a motion for reconsideration be filed prior to taking an appeal in a Chapter 587 case. Subsequently, HRS § 571-54 was amended to eliminate this requirement. To be consistent with statutory amendments, this amendment would permit but not mandate the filing of a motion for reconsideration in Chapter 587 cases prior to appeal.

IT IS FURTHER ORDERED that Comments and Commentary are provided by the rules committees for interpretive assistance. The comments and commentary express the views of the committees and are not binding on the courts.

DATED: Honolulu, Hawai i, March 25, 2008.