

In the Matter of the Amendment
of the
HAWAI'I PROBATE RULES

EM. RINANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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ORDER AMENDING RULES 150, 151, and 152
OF THE HAWAI'I PROBATE RULES

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

IT IS HEREBY ORDERED that Rules 150, 151, and 152 of the Hawai'i Probate Rules, are amended, effective January 1, 2009, as follows (deleted material is bracketed and stricken; new material is underscored):

PART F. DETERMINATION OF DEATH PROCEEDINGS

I. COMMENCEMENT OF ACTION

Rule 150. PETITION.

An interested person may file a petition for determination of death, setting forth:

(a) the name, all known aliases, last known address [~~date of birth, and social security number~~] of the missing person; and

(b) the name and address of the missing person's spouse or reciprocal beneficiary, parents, and children, or if no such relatives survive, the person's closest living relatives by degree of relationship; and

(c) the approximate date of disappearance and a complete description of the circumstances and evidence surrounding the disappearance, including governmental reports and published accounts; and

(d) a description of all efforts made to locate the individual and the results of such search, including affidavits or other testimony of all immediate relatives of the individual that they have had no contact with the individual since the disappearance.

Prior to the hearing on the petition, the person filing the petition for determination of death shall also file under seal and under separate cover the missing person's date of birth and social security number, if known.

Rule 151. CASE NUMBER AND CAPTION.

The clerk of the court shall assign a P. No. to a petition for determination of death, and all subsequent probate proceedings involving that individual in the circuit shall use the same case number. ~~[The person filing the petition for determination of death shall include in the caption of the case after the name of the missing person the person's date of birth and social security number, if known.]~~

COMMENTARY:

To maintain consistency in these rules, proceedings for determination of death will be assigned a P. No., which would then be used in any later probate proceeding so that all pleadings relating to the deceased are contained in one court file. ~~[The caption of the case and all required notices should have the date of birth and social security number, if known, for the person listed after the missing person's name to more definitely identify the individual and eliminate confusion among persons with similar names.]~~

II. NOTICE

Rule 152. METHOD OF PROVIDING NOTICE.

The petitioner for determination of death shall serve notice on all individuals named in the petition in the manner provided by Rule 7 and shall cause publication of the notice in a newspaper of general circulation in Hawai'i once a week for three consecutive weeks, addressed to the missing person[; ~~including that person's date of birth and social security number~~], if known, and notifying that person of the filing of the petition and the date and time set for hearing. In addition, petitioner shall serve notice of the hearing on the alleged decedent at his or her last known address by registered or certified mail.

COMMENTARY[;]:

This rule establishes standard notice requirements consistent with those used in other proceedings before the probate court.

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, November 25, 2008.



James E. Duggan, Jr.