

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Amendment
of the
Hawai'i Rules of Appellate Procedure

KIHAJAWANO
CLERK APPELLATE COURTS
STATE OF HAWAII

2008 APR 23 AM 9:44

FILED

ORDER AMENDING RULE 35 OF THE
HAWAI'I RULES OF APPELLATE PROCEDURE
(By: Moon, C.J., Levinson, and Duffy, JJ.;
Nakayama and Acoba, JJ., dissenting, separately)

IT IS HEREBY ORDERED that Rule 35 of the Hawai'i Rules of Appellate Procedure, is amended, effective July 1, 2008 as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 35. DISPOSITIONS.

(a) **Class of disposition.** Dispositions may be [~~rendered~~] authored by a designated judge or justice or may be per curiam and may take the form of published [~~per curiam~~] or memorandum opinions or dispositional orders.

(b) **Publication.** Memorandum opinions shall not be published. Dispositional orders shall not be published except upon the order of the appellate court. For purposes of this Rule 35, an opinion or order is published when the appellate court designates it for publication in *West's Hawai'i Reports* or the *Pacific Reporter*.

(c) **Citation.**

(1) DISPOSITIONS BEFORE JULY 1, 2008. A memorandum opinion or unpublished dispositional order filed before July 1, 2008 shall not be cited in any other action or proceeding except when the memorandum opinion or unpublished dispositional order (i) establishes the law of the pending case, or (ii) has res judicata or collateral estoppel effect, or (iii) in a criminal action or proceeding, [~~involving~~] involves the same respondent.

(2) DISPOSITIONS ON OR AFTER JULY 1, 2008. Any disposition filed in this jurisdiction on or after July 1, 2008 may be cited in any proceeding. A party or attorney has no duty to cite an unpublished disposition. Memorandum opinions and unpublished dispositional orders are not precedent, but may be cited for persuasive value; provided that a memorandum opinion or unpublished dispositional order that establishes the law of the pending case or that has res

judicata or collateral estoppel effect shall be honored. Notwithstanding any other rule, a copy of a cited unpublished disposition shall be appended to the brief or memorandum in which the unpublished disposition is cited.

(d) **Mailing by appellate clerk.** The appellate clerk shall promptly mail or telefax all parties a copy of the opinion or dispositional order.

(e) **Terminology.** When used in an opinion or dispositional order, the word "reverse" ends litigation on the merits, and the phrase "vacate and remand" indicates the litigation continues in the court or agency in accordance with the appellate court's instruction.

DATED: Honolulu, Hawai'i, April 23, 2008.



Stephen A. Levinson

James E. Dullea, Jr.