

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the Appeals  
from  
CHILD PROTECTIVE PROCEEDINGS

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NORMA T. YARA  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

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FILED

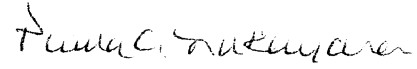
ORDER ESTABLISHING A CHILD PROTECTIVE  
PROCEEDINGS PILOT PROJECT AND TEMPORARY RULES  
GOVERNING THE PILOT PROJECT

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

In the interest of expediting appeals in child protective actions, there is hereby established a Child Protective Proceedings Pilot Project [hereinafter, the pilot project] in the appellate courts of the State of Hawai'i, effective for appeals filed after July 1, 2008 and continuing until June 30, 2009. Notwithstanding contrary provisions of the Hawai'i Rules of Appellate Procedure or other rules of court, a direct appeal taken from any order, decree, or judgment of the Family Court in a proceeding under Hawai'i Revised Statutes (HRS) Chapter 587 (Child Protective Act), see HRS § 587-78 (2006), shall be governed by the attached Child Protective Pilot Project

Rules (CPPPR), that are hereby adopted for the duration of the pilot project unless otherwise extended.

DATED: Honolulu, Hawai'i, April 3, 2008.



James E. Duffy, Jr.

## CHILD PROTECTIVE PILOT PROJECT RULES

### **Rule 1. EXTENSIONS OF TIME.**

Extensions of time for any act required by these rules or the Hawai'i Rules of Appellate Procedure, including the filing of a notice of appeal or cross-appeal under Rules 4(a)(4) and 4.1(e) of the Hawai'i Rules of Appellate Procedure, shall be granted only upon clear and convincing proof of extraordinary cause, *e.g.*, death, serious illness, or local, state, or national disaster or emergency.

### **Rule 2. NOTICE OF APPEAL.**

When an appeal is permitted by law, the notice of appeal shall be filed within 15 days after entry of the judgment or appealable order or decree. If the appeal is not filed within the 15-day period, but is otherwise filed within the time permitted by Rule 4 of the Hawai'i Rules of Appellate Procedure, the appeal shall not be dismissed for lack of jurisdiction, but the appellate court shall require the late-filing party or counsel to show cause as to why the party or counsel did not comply with the 15-day filing requirement. Absent good cause, the court shall assess an appropriate monetary sanction against the responsible party or counsel.

### **Rule 3. NOTICE OF CROSS-APPEAL.**

A notice of cross-appeal shall be filed within 5 days after the notice of appeal is served. If the notice of cross-appeal is not filed within the 5-day period, but is otherwise filed within the time permitted by Rule 4.1 of the Hawai'i Rules of Appellate Procedure, the cross-appeal shall not be dismissed for lack of jurisdiction, but the appellate court shall require the late-filing party or counsel to show cause as to why the party or counsel did not comply with the 5-day filing requirement. Absent good cause, the court shall assess an appropriate monetary sanction against the responsible party or counsel.

### **Rule 4. POST-JUDGMENT MOTIONS.**

If a timely post-judgment motion is filed in the family court, the 15-day period for filing the notice of appeal shall commence when the order disposing of the motion is filed, provided that the order deciding the motion shall be filed in the record within 30 days after the motion was filed. If an order deciding the timely post-judgment motion is not filed within the 30-day period, the motion shall be deemed denied on the 30th day, and the time from which to file the appeal shall commence on that day.

### **Rule 5. SIGNATURE OF DILIGENT SEARCH.**

The notice of appeal shall be signed by appellant's counsel and by appellant, unless appellant is a minor child or a state agency. Counsel filing a notice of appeal without appellant's signature shall contemporaneously file a certification that substantially complies with the Counsel's Certificate of Diligent Search form attached to these rules as Exhibit 1.

## CHILD PROTECTIVE PILOT PROJECT RULES

### **Rule 6. TRANSCRIPTS.**

Appellant shall file the appellant's request for transcripts when appellant files the notice of appeal. If all transcripts are not ordered, appellant shall serve the request for partial transcripts on appellee, along with a statement of points of error the appellant intends to present on appeal, and appellee shall request any other transcripts desired no later than 5 days after appellee was served with appellant's request and statement. The Office of the Chief Court Administrator shall require that the transcripts are prepared and filed with the record on appeal. If a transcript is made from a recorded proceeding, the Office of the Chief Court Administrator may have the transcript prepared and certified by any court employee, notwithstanding the provisions of Rule 2 of the Rules Governing Court Reporters. When the transcript is prepared by an employee other than a court reporter, the clerk of the trial court shall charge the amount charged for copying documents and shall deposit the proceeds in the general fund, provided that the court may waive the transcript fee upon motion and a showing of good cause. If the transcript is not prepared and filed timely, the appellate court shall require the court reporter or employee-transcriber to show cause as to why the court reporter or employee-transcriber should not be sanctioned and, upon failure to show good cause, shall impose an appropriate sanction.

### **Rule 7. RECORD ON APPEAL.**

The clerk of the trial court shall transmit the record, including transcripts, if any, to the appellate court clerk no later than 40 days after filing of the notice of appeal. In lieu of a paper record, the clerk of the trial court may submit an imaged record in accordance with the provisions of Rule 11(b) of the Hawai'i Rules of Appellate Procedure.

### **Rule 8. CIVIL APPEALS DOCKETING STATEMENT.**

A Civil Appeals Docketing Statement shall not be filed.

### **Rule 9. STATEMENT OF JURISDICTION.**

The statement of jurisdiction required by Rule 12.1 of the Hawai'i Rules of Appellate Procedure shall be filed within 5 days after the record on appeal is filed.

### **Rule 10. ABBREVIATED BRIEFS.**

(a) **Abbreviated Opening Brief.** Unless otherwise permitted by the appellate court pursuant to Rule 1 of these rules, appellant shall file an abbreviated opening brief no later than 30 days after the record on appeal is filed. The abbreviated opening brief shall substantially comply with the form and format of the sample attached to these rules as Exhibit 2. Unless otherwise permitted by the appellate court for good cause, the abbreviated brief shall not exceed 25 pages, excluding the flyleaf, certificate of service, and attachments, and shall comply with all other provisions of Rule 32 of the Hawai'i Rules of Appellate Procedure. The brief's flyleaf shall prominently display the words

## CHILD PROTECTIVE PILOT PROJECT RULES

“HRS Chapter 587 (Child Protective Act) Appeal” as shown on Exhibit 2. An abbreviated opening brief shall include:

(i) A statement of the nature of the case and the relief sought;

(ii) A concise statement of material facts that relate to the points asserted, with reference to the documentary record or transcript where evidence in support of the asserted fact is located;

(iii) A statement of the points of error presented for appeal. Each point of error shall include (1) clear identification of the specific point of error, (2) reference to the part of the record where the error occurred, (3) how each point was preserved for appeal, with a reference to the part of the record where the alleged error was preserved, and (4) the applicable standard of review for the point of error;

(iv) Concise legal argument about each point of error with citation to legal authority;

(v) A section on the last page of the brief that identifies any related appeals, including the family court case number and the appellate court case number. For purposes of this rule, an appeal is related when it arises from the same family court proceeding, concerns members of the same household, or concerns individuals who are related by consanguinity or affinity; and

(vi) A copy of the order, decree or judgment from which the appeal is taken, a copy of the family court’s findings of fact and conclusions of law, if entered, and a copy of each order on a post-judgment motion shall be attached to the brief.

**(b) Abbreviated Answering Brief.** Unless otherwise permitted by the appellate court pursuant to Rule 1 of these rules, within 30 days after service of appellant’s abbreviated opening brief, or receipt of the abbreviated opening brief, as evinced by an acknowledgment of service as provided in Rule 25(e) of the Hawai‘i Rules of Appellate Procedure, whichever is later, appellee may file an abbreviated answering brief. The abbreviated answering brief shall substantially comply with the form and format of the sample attached to these rules as Exhibit 3. The abbreviated answering brief shall contain the sections prescribed for abbreviated opening briefs, except appellee shall omit the statement of points and may omit any other section with which appellee has no contention. Unless otherwise permitted by the appellate court for good cause, the abbreviated answering brief shall not exceed 25 pages, excluding the flyleaf, certificate of service, and attachments, and shall comply with all other provisions of Rule 32 of the Hawai‘i Rules of Appellate Procedure. The abbreviated brief’s flyleaf shall prominently display the words “HRS Chapter 587 (Child Protective Act) Appeal” as shown on Exhibit 3. An appellee who does not intend to file an answering brief shall notify the appellate court and all parties, in writing, of that decision prior to the expiration of the time for filing the abbreviated answering brief.

**(c) Abbreviated Reply Brief.** If an abbreviated answering brief is filed and served, appellant may, within 10 days after service of the abbreviated answering brief, or receipt of the abbreviated answering brief, as evinced by an

## CHILD PROTECTIVE PILOT PROJECT RULES

acknowledgment of service as provided in Rule 25(e) of the Hawai'i Rules of Appellate Procedure, whichever is later, file an abbreviated reply brief. The abbreviated reply brief shall be confined to matters presented in the abbreviated answering brief. The abbreviated reply brief shall not exceed 5 pages, excluding the flyleaf, certificate of service, and attachments, and shall comply with Rule 32 of the Hawai'i Rules of Appellate Procedure. The brief's flyleaf shall prominently display the words "HRS Chapter 587 (Child Protective Act) Appeal" as shown on Exhibit 1. If no reply brief is to be filed, appellant shall notify the appellate court and all parties, in writing, of that decision prior to the expiration of the time for filing the abbreviated reply brief.

(d) **Briefs on cross-appeal.** If a cross-appeal is filed, the parties shall file separate abbreviated opening, answering, and reply briefs on the cross-appeal, within the same time frames and in the same manner set out above for briefs for the appeal.

### **Rule 11. ADVANCEMENT ON THE CALENDAR.**

When briefing is completed or the time for all briefing has expired and a panel has been assigned to the case, the appellate court clerk shall notify the lead judge that the appeal is ready for disposition, and the panel hearing the appeal shall advance the appeal on its calendar. Oral argument may or may not be had as in any other appeal.

### **Rule 12. MOTIONS FOR ATTORNEYS' FEES AND COSTS.**

No later than 5 days after briefing is complete, an attorney who seeks fees and costs shall submit a properly documented request for fees and costs. *See* Rule 39(d) of the Hawai'i Rules of Appellate Procedure, and Forms 7 and 8 attached thereto.

### **Rule 13. MOTION FOR RECONSIDERATION.**

A motion for reconsideration may be filed no later than 5 days after the filing of the appellate court's opinion, summary disposition order, or dismissal order.

### **Rule 14. JUDGMENT ON APPEAL.**

The appellate court shall enter its Judgment on Appeal no later than 5 days after the filing of its decision on any timely motion for reconsideration or, if a motion for reconsideration is not filed, within 5 days after the time in which a motion for reconsideration could have been filed.

### **Rule 15. CONTINUED APPLICABILITY OF THE HAWAI'I RULES OF APPELLATE PROCEDURE OR OTHER APPLICABLE RULES.**

All procedures in the pilot project not altered by these Child Protective Pilot Project Rules shall conform to the Hawai'i Rules of Appellate Procedure or other applicable court rules.

No. \_\_\_\_\_

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAII

**HRS CHAPTER 587 (CHILD PROTECTIVE ACT) APPEAL**

IN THE INTEREST OF

[INITIALS]

) FC-S No. \_\_\_\_\_

)

)

) FAMILY COURT OF THE [specify]

) CIRCUIT

)

)

)

)

\_\_\_\_\_

COUNSEL'S CERTIFICATE OF DILIGENT SEARCH

1. I, \_\_\_\_\_, am counsel for Appellant NAME in the above captioned case.

2. Since entry of the order in the child protective proceeding, I have attempted to ascertain the whereabouts of my client:

\_\_\_\_\_ (a) to discuss the merits of an appeal.

\_\_\_\_\_ (b) to retain his/her signature on the notice of appeal.

3. I have made the following efforts:

\_\_\_\_\_ (a) Sent a letter with proper postage affixed to the last known address of my client and:

\_\_\_\_\_ received no response.

\_\_\_\_\_ the letter was returned to me.

\_\_\_\_\_ (b) Ascertained through the United States Post Office in \_\_\_\_\_ that my client did not leave a forwarding address.

\_\_\_\_\_ (c) Telephoned my client at the number he/she provided and received no response.

\_\_\_\_\_ (d) Investigated to determine if there is a new telephone listing and found none for my client.

\_\_\_\_ (e) Undertook the following additional inquiry into the whereabouts of my client:

4. I am unable to determine the whereabouts of my client.

I hereby declare that the above stated facts are true.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature  
Machine Printed Name  
Address  
Telephone

Counsel for Appellant

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Certificate of Diligent Search was duly served upon Appellee or Appellee's counsel (if represented)

\_\_ in person at \_\_\_\_\_ on \_\_\_\_\_.

\_\_ by mail at \_\_\_\_\_ on \_\_\_\_\_.

\_\_ by certified mail at \_\_\_\_\_ on \_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Party's or Attorney's Signature]  
Party's or Attorney's machine printed name  
Counsel for Appellant

No. \_\_\_\_\_

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI‘ I

**HRS CHAPTER 587 (CHILD PROTECTIVE ACT) APPEAL**

IN THE INTEREST OF

[INITIALS]

) FC-S No. \_\_\_\_\_

)

) Appeal from the [specify judgment, decree, or  
order appealed from]

)

) FAMILY COURT OF THE [specify]

) CIRCUIT

)

) [list judges]

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APPELLANT [name]'s  
ABBREVIATED OPENING BRIEF and  
CERTIFICATE OF SERVICE

[Party's or Attorney's Name (w/bar no.)]

[Address]

[Telephone No.]

Attorney[s] for Appellant

Appellant [name] submits this Abbreviated Opening Brief from the [specify judgment, decree, or order appealed from] of the Family Court of the [specify] Circuit in a Child Protective Act proceeding, under Hawai'i Revised Statutes Chapter 587.

1. PARTIES: The names of the parties involved in this appeal are:

Appellant:

Appellee:

2. THE CHILD/CHILDREN WHO IS/ARE THE SUBJECT OF THIS APPEAL:

Initials of the Child(ren) and Dates of Birth:

The Child's/Children's Guardian ad litem is:

3. CONCISE STATEMENT OF THE NATURE OF THE CASE and RELIEF SOUGHT FROM THE APPELLATE COURT

4. CONCISE STATEMENT OF MATERIAL FACTS THAT RELATE TO THE POINTS ASSERTED (include reference to the documentary record or transcript where evidence in support of the asserted fact is located):

5. POINTS OF ERROR (JUDGMENT(S), DECREE(S), OR ORDER(S) TO BE REVIEWED): Appellant seeks review of the following order(s).

Title of Judgment, Decree, or Order (Select or Insert)	Date Judgment, Decree, or Order Filed	Place in the record where the judgment, decree, or order is <b>located</b>
___ 1. Order Adjudicating Children as abused, neglected, and/or dependent		
___ 2. Order Awarding Permanent Custody		
___ 3. Order denying or dismissing a motion to award permanent custody		
___ 4. Other Judgment(s), Decree(s), or Order(s): [specify]		
___ 5. Other Judgment(s), Decree(s), or Order(s): [specify]		

Title of Judgment, Decree, or Order (Select or Insert)	How was error preserved?	Place in the record where error was preserved?
___ 1. Order Adjudicating Children as abused, neglected, and/or dependent		
___ 2. Order Awarding Permanent Custody		
___ 3. Order denying or dismissing a motion to award permanent custody		
___ 4. Other Judgment(s), Decree(s), or Order(s): [specify]		
___ 5. Other Judgment(s), Decree(s), or Order(s): [specify]		

6. CONCISE LEGAL ARGUMENT ABOUT EACH POINT OF ERROR

7. RELATED APPEALS: Identify appeals related to this appeal. (*i.e.* regarding children from the same family, or appeal of the other parent).

8. ATTACHMENTS: The following are attached to this brief:

(a) a copy of the judgment(s), decree(s), or order(s) on appeal

(b) a copy of the separate findings of facts and conclusions of law, if entered

(c) a copy of each order on any post-judgment motion(s)

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Respectfully submitted,

[Party's or Attorney's Signature]

Party's or Attorney's Machine Printed Name

Counsel for Appellant

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing abbreviated opening brief was duly served upon Appellee or Appellee's counsel (if represented)

\_\_\_ in person at \_\_\_\_\_ on \_\_\_\_\_.

\_\_\_ by mail at \_\_\_\_\_ on \_\_\_\_\_.

\_\_\_ by certified mail at \_\_\_\_\_ on \_\_\_\_\_.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Party's or Attorney's Signature]

Party's or Attorney's machine printed name

Counsel for Appellant

No. \_\_\_\_\_

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI‘ I

**HRS CHAPTER 587 (CHILD PROTECTIVE ACT) APPEAL**

IN THE INTEREST OF

[INITIALS]

) FC-S No. \_\_\_\_\_

)

) Appeal from the [specify judgment, decree,  
) or order appealed from]

)

) FAMILY COURT OF THE [specify]

) CIRCUIT

)

) [list judges]

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**APPELLEE [name]’s  
ABBREVIATED ANSWERING BRIEF and  
CERTIFICATE OF SERVICE**

[Party’s or Attorney’s Name (w/bar no.)]

[Address]

[Telephone No.]

Attorney[s] for Appellee

Appellee [name] submits this Abbreviated Answering Brief in response to Appellant's Abbreviated Opening Brief, filed [date].

1. PARTIES: Appellant has correctly stated the parties in this case. [OR] The names of the parties involved in this appeal are as follows:

Appellant:

Appellee:

2. THE CHILD/CHILDREN WHO IS/ARE THE SUBJECT OF THIS APPEAL: Appellant has correctly stated the child/children in this case. [OR] The names of the child/children involved in this appeal are as follows:

Initials of the Child(ren) and Dates of Birth:

The Child's/Children's Guardian ad litem is:

3. CONCISE STATEMENT OF THE NATURE OF THE CASE [OR] Indicate: "Appellant has correctly stated the nature of the case."
4. RELIEF SOUGHT FROM THE APPELLATE COURT
5. CONCISE STATEMENT OF MATERIAL FACTS THAT RELATE TO THE POINTS ASSERTED [OR] Indicate: "Appellant has correctly stated the material facts that relate to the points asserted."
6. CONCISE LEGAL ARGUMENT IN RESPONSE TO EACH OF APPELLANT'S ARGUMENTS (address each of Appellant's arguments in the order they are made in the abbreviated opening brief)
7. RELATED APPEALS: Identify appeals related to this appeal. (*i.e.* regarding children from the same family, or appeal of the other parent).

8. ATTACHMENTS: The following are attached to:

Opening Brief	Answering Brief	
<input type="checkbox"/>	<input type="checkbox"/>	a copy of the judgment(s), decree(s), or order(s) on appeal
<input type="checkbox"/>	<input type="checkbox"/>	a copy of the separate findings of facts and conclusions of law, if entered
<input type="checkbox"/>	<input type="checkbox"/>	a copy of each order on any post-judgment motion(s)

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Respectfully submitted,

[Party's or Attorney's Signature]  
Party's or Attorney's Machine Printed Name  
Counsel for Appellee

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing abbreviated answering brief was duly served upon Appellant or Appellant's counsel (if represented)

\_\_\_ in person at \_\_\_\_\_ on \_\_\_\_\_.  
\_\_\_ by mail at \_\_\_\_\_ on \_\_\_\_\_.  
\_\_\_ by certified mail at \_\_\_\_\_ on \_\_\_\_\_.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Party's or Attorney's Signature]  
Party's or Attorney's machine printed name  
Counsel for Appellee