

RE: **Hawai'i Court Records Rules**
 Hawai'i Electronic Filing and Service Rules

The Supreme Court of Hawaii seeks public comment regarding proposals of the Hawaii Court Records Rules and Hawaii Electronic Filing and Service Rules.

The Judiciary is planning to implement electronic filing for all cases in the appellate courts and for criminal cases in the trial courts in the year 2010. Civil electronic filing should launch before or during 2012.

The Hawaii Court Records Rules would govern access to court records in both hard copy and electronic form. The Hawaii Electronic Filing and Service Rules sets forth procedures by which court documents should be electronically submitted.

Comments about the proposed rules should be submitted, in writing, **no later than March 8, 2010**, to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [online form](#) on the Judiciary's website at www.courts.state.hi.us.

Attachment

PROPOSED HAWAI‘I ELECTRONIC FILING AND SERVICE RULES

Rule 1. DEFINITIONS.

1.1 Conventionally file means the submission of paper documents and physical exhibits to the clerk for filing in the court record.

1.2 Conventional service means providing a paper document or printed copy of a document to a party, attorney, witness, or others as required by law or rule of court and submitting a certificate to the court attesting to the fact the paper document or printed copy of a document was so provided.

1.3 Documents mean pleadings, motions, exhibits, orders, judgments, decrees, or other forms of written communication or memorialization traditionally provided to, or created by, the court on paper or electronically, including electronic forms, electronic templates, and reports filed by or with the court by way of conventional or electronic methods.

1.4 Electronic filing means the submission of documents through JEFS for docketing and storage in JIMS by authorized JEFS Users.

1.5 Electronic filing system means the electronic mechanisms by which documents are submitted through JEFS for docketing and storage in JIMS.

1.6 Electronic recording means the clerk’s acts of docketing and storing images of paper documents in JIMS.

1.7 Electronic signature means the name of the JEFS user typed in the space usually reserved for a handwritten signature preceded by "/s/." *See* Rule 5.1 of these rules.

1.8 JEFS means the Judiciary Electronic Filing System.

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1.9 JEFS User means an individual with a valid JEFS login and password.

1.10 JIMS means the Judiciary Information Management System, which is the case management system developed by the Hawai‘i Judiciary and implemented by the Hawai‘i Supreme Court to record information and documents related to all cases filed in the courts of the State of Hawai‘i.

1.11 JPEG means the method of compression for photographic images created by the Joint Photographic Experts Group.

1.12 Lead document means the document to which exhibits are attached.

1.13 Notice of electronic filing means the notification generated automatically upon the electronic filing of a document through JEFS for docketing and storage in JIMS and transmitted by e-mail to parties in the case who are JEFS Users or who have consented to service by e-mail. Except as otherwise provided in these rules, the notice shall include a link to the filed document.

1.14 Original instrument means a document such as a deed, will, certificate, or the like that was produced on paper, parchment, or other non-electronic means of display, signed in ink, or sealed by wax, impression, or stamp.

1.15 PDF means Adobe Portable Document Format.

1.16 Record, when used as a noun, means the information and documents maintained for each case, as set out in Rule X of the Hawai‘i Court Records Rules and relevant statutes; when used as a verb, means the clerk’s acts of docketing and storing images of paper documents in JIMS.

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1.17 Text-only entry means a notation on the docket without a separate document attached.

1.18 TIFF means Tagged Image File Format.

Rule 2. SCOPE OF ELECTRONIC FILING.

2.1 Applicability. These rules apply to all cases included in JIMS, unless otherwise ordered by the Hawai‘i Supreme Court.

2.2 All Documents. Unless otherwise expressly provided in these rules or in exceptional circumstances that prevent a JEFS User from filing electronically, a JEFS User shall file each document as a PDF or TIFF document through JEFS for docketing and storage in JIMS, including documents that are sealed by court order and documents proposed to be submitted under seal or for *in camera* review. A JEFS User shall file documents at <http://xxxxxxx>. The clerk shall electronically file each document generated by the court and shall electronically record each document submitted by a non-JEFS User.

2.3 Exhibits. Each supporting exhibit, except photographs, shall be scanned or created as a PDF or TIFF document. Each photographic exhibit shall be submitted as a JPEG image no greater than ### pixels x ### pixels and ### kbs. Exhibits shall be submitted as separate JEFS attachments to the lead document. The JEFS User shall identify and label each exhibit clearly. A party may conventionally file exhibits that cannot be electronically converted (*e.g.*, videotapes, large maps, weapons, drugs, drug paraphernalia, etc). The clerk shall note the

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receipt and location of physical exhibits on the docket and shall maintain, return, or dispose of exhibits in accordance with the rules governing the procedure before the court and the applicable Record Control Schedule.

2.4 Original Instruments. A party who files images of original instruments as exhibits shall retain the original instruments and shall provide them to the court at an evidentiary hearing when relevant or when requested by the court. Original instruments submitted to the court for an evidentiary hearing shall be returned to the party who submitted them upon conclusion of the hearing.

2.5 Electronic Recording of Documents Submitted on Paper; Filing Date and Time Preserved. The clerk shall electronically record any paper document conventionally filed. The filing date and time reflected on the conventionally filed document and subsequently recorded in JIMS shall be deemed the filing date for all purposes under any of the Hawai‘i Rules of Court. Once electronically recorded, the clerk shall not retain the paper document.

2.6 Authority of the Clerk to Provide Guidance. The clerk is authorized to issue notices, guidelines, user guides, and the like that provide clarification or assistance to facilitate electronic filing. Such clarification or assistance may be made available on the court’s website.

Rule 3. EFFECT OF ELECTRONIC FILING.

3.1 Filing Complete. The electronic filing of a document is deemed complete for all purposes under any of the Hawai‘i Rules of Court when a Notice of Electronic Filing is generated.

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3.2 Official Court Record. The record of each court case maintained in JIMS is the official court record. Documents electronically filed or recorded in JIMS are deemed original documents for all purposes under any of the Hawai'i Rules of Court. Printed or electronic copies of documents maintained in JIMS may be certified as true and correct copies of the documents in the official record of the case.

3.3 Time of Filing. Except as provided in Rule 2.5 of these rules, a document filed through JEFS for docketing and storage in JIMS is deemed filed at the date and time stated on the Notice of Electronic Filing. The time stamp on the Notice of Electronic Filing is the time the document was electronically received by the court, not the time the document was transmitted by the JEFS User.

3.4 Filing Deadlines. Filing a document electronically does not alter filing deadlines.

Rule 4. ELIGIBILITY, REGISTRATION, PASSWORDS.

4.1 Eligibility; Registration Required.

(a) **ATTORNEYS.** Each attorney representing a party to a case maintained in JIMS shall register as a JEFS User. An attorney is eligible for registration if the attorney is admitted to practice before the courts of the State of Hawai'i, is on active status, and is not suspended, disbarred, or otherwise prohibited from practicing law in the State of Hawai'i. An attorney admitted *pro hac vice* may not register as a JEFS User because all filings must be made by the local counsel with whom the *pro hac vice* attorney is associated.

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(b) **SELF-REPRESENTED PARTIES.** A self-represented party may register as a JEFS User for the case(s) in which he or she is a party.

4.2 Registration. An individual eligible for registration as a JEFS User shall register by way of the internet at <https//xxxxxxxx>. Required registration information shall include, at minimum, the registrant’s name, one or more email addresses for service of process, a physical address, and one or more telephone numbers. Where the registrant is an attorney, the registration shall include the attorney’s bar admission number and acknowledgments that (a) the registrant consents to electronic notice in lieu of physical service of documents and (b) use of the JEFS login and password is sufficient to validate the registrant’s electronic signature.

4.3 Login and Password; Training. Upon successful registration, each registrant shall be required to attend a brief training course, either in person or by way of a web-based tutorial, and, upon successful completion of the course, an authorized Judiciary representative shall issue a JEFS login and password to the registrant. The JEFS login and password shall be used exclusively by the JEFS User or, if the JEFS User is an attorney, by the JEFS User’s legal assistant or staff member. A JEFS User shall not knowingly permit a login or password to be used by anyone other than the JEFS User and, if the JEFS User is an attorney, the JEFS User’s assistant or staff member. Each JEFS User shall safeguard his or her login and password and shall immediately notify the clerk of the court upon discovery or suspicion that the login and/or password security has been breached.

4.4 Suspension or Deactivation of JEFS Access. A court or the Administrative Director may, at any time, with or without notice, cause a JEFS User’s access to JEFS to be

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suspended or deactivated. The JEFS User shall be given an opportunity to contest the suspension or deactivation. The court or the Administrative Director may require successful completion of additional training to reactivate an individual’s JEFS participation.

Rule 5. SIGNATURES.

5.1 JEFS User’s Signature. A JEFS User shall affix his or her signature to each document requiring a signature by typing his or her name in the space usually reserved for a handwritten signature preceded by "/s/" (*e.g.*, /s/ Jane Lawyer).

5.2 Validation of Electronic Signature. The use of a JEFS User’s login and password to electronically file a document containing the JEFS User’s electronic signature (*e.g.*, /s/ Jane Lawyer) validates the electronic signature on the document for all purposes under any of the Hawai‘i Rules of Court, including Rule 11 of the Hawai‘i Rules of Civil Procedure, Rule 11 of the District Court Rules of Civil Procedure, and Rule 11 of the Hawai‘i Family Court Rules.

5.3 Third Party Signatures. A document containing the handwritten signature of an individual who is not a JEFS User, *e.g.*, a party affidavit with a notary jurat or a declaration, shall be scanned in either PDF or TIFF format, and the scanned document shall be electronically filed.

5.4 Retention of Documents with Third Party Signatures. A paper document with the handwritten signature of a third party, scanned and filed in accordance with these rules, shall be maintained in paper form by the JEFS User until 30 days after the expiration of any appeal period. Upon a court’s request, a JEFS User shall provide the paper document containing the handwritten signature for review. A non-filing signatory or a party who disputes the authenticity

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or alleged endorsement of a scanned and electronically filed document shall file an objection to the document, the merits of which shall be determined by the court in the usual course.

Rule 6. SERVICE OF DOCUMENTS.

6.1 Service of Documents by Electronic Means. The Notice of Electronic Filing automatically generated by JEFS constitutes service of the electronically filed document to JEFS Users. Parties who are not JEFS Users may consent to electronic service by submitting a signed statement consenting to electronic service and providing an active email address.

6.2 Conventional Service of Electronically Filed Documents.

(a) **BY THE FILING PARTY.** A filing party shall provide conventional service of electronically filed documents that are required to be served to parties who are not JEFS Users or who have not consented to electronic service. The paper copy of the document served shall be accompanied by a copy of the Notice of Electronic Filing showing the date and time of filing. The filing party shall file a certificate of conventional service.

(b) **BY THE CLERK.** The clerk shall provide conventional service of any order, decree, or judgment to parties who are not JEFS Users or who have not consented to electronic service. The clerk shall note the service by a text-only entry on the docket or by filing a certificate of conventional service.

6.3 Service of Electronically Filed Documents. The Notice of Electronic Filing automatically generated by JEFS is sufficient to show service on all JEFS Users and parties who

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have consented to receive service by electronic means. Service on other parties and certification thereof shall be made in accordance with Rule 6.2 of these rules.

6.4 Sealed Documents; Documents Submitted for *In Camera* Review. Sealed documents shall be served in accordance with Rule 6.1 or 6.2 of these rules. The Notice of Electronic Filing of documents for *in camera* review shall be provided to JEFS Users and those who have consented to receive electronic service, but the document submitted for *in camera* review shall not be attached or linked to the Notice. The filing party shall conventionally serve the Notice of Electronic Filing of a document for *in camera* review to parties who are not JEFS Users or who have not consented to receive electronic service, but a copy of the document shall not be provided with the Notice.

Rule 7. COURT-ISSUED DOCUMENTS.

7.1 Orders, Decrees, and Judgments; Other Court Issued Documents. All orders, decrees, judgments, and other court-issued documents shall be electronically filed in accordance with internal court procedures.

7.2 Docket or Text-Only Orders. An order, but not a final judgment or decree, may be issued by the court as a text-only entry on the docket, without an attached document. Such entry shall include the judge’s electronic signature (*e.g.*, /s/ Joan Justice, Judge). The judge’s electronic signature is valid for all purposes under any of the Hawai‘i Rules of Court and official and binding on the parties.

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7.3 Notice of Entry of Orders, Decrees, and Judgments. The clerk’s certificate of conventional service, or the issuance of a JEFS Notice of Electronic Filing of an order, decree, or judgment, constitutes the clerk’s notice of entry of the order, decree, or judgment.

7.4 Summons. The clerk may sign, affix the court’s seal, and issue a summons electronically, but a summons may not be served electronically.

Rule 8. CONFIDENTIAL CASES; SEALED AND *IN CAMERA* DOCUMENTS.

8.1 Confidential Cases; Sealed Documents. Documents in confidential cases and documents submitted under seal or sealed by court order shall be maintained in JIMS under electronic security and made accessible to only the parties, the court, the appellate courts, and court staff until a court of competent jurisdiction orders otherwise.

8.2 *In Camera* Documents. Documents submitted for *in camera* review shall be maintained in JIMS under electronic security and made accessible to only the court, the appellate courts, and court staff until a court of competent jurisdiction orders otherwise.

Rule 9. SUBMISSION OF PROPOSED ORDERS, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENTS.

9.1 Proposed Orders, Findings of Fact, Conclusions of Law, and Judgments. Proposed orders, findings of fact, conclusions of law, and judgments shall be clearly marked "proposed" and filed through JEFS for docketing in JIMS like any other document. Service of proposed orders, findings of fact, conclusions of law, and judgments shall be made in accordance with Rule 6.1 or Rule 6.2 of these rules.

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Rule 10. TECHNICAL FAILURES. JEFS Users or other parties who claim a filing is untimely or that they have been otherwise prejudiced by a technical failure of JEFS or JIMS may seek appropriate relief from the court. The court shall determine whether a technical failure occurred and whether relief should be afforded under the circumstances.

Rule 11. PUBLIC ACCESS TO ELECTRONIC CASE FILES.

11.1 On-Site Access. The clerks of the respective courts shall provide public access to the dockets and documents of non-confidential cases maintained in JIMS through public computers in their respective locations. The clerks of the respective courts shall restrict access to dockets and documents in confidential, sealed, or restricted records maintained in JIMS to parties and attorneys entitled thereto.

11.2 Internet Access. The Administrative Director shall provide internet access to the dockets of non-confidential JIMS cases without cost. The Administrative Director may provide internet access to public documents in non-confidential cases by subscription at such rates as shall be determined from time to time by the supreme court. The Administrative Director may provide internet access through a secure network connection to confidential, sealed, or restricted records by subscription to parties and attorneys entitled thereto.

11.3 Personal Information. JEFS Users shall protect personal information in public records and documents in accordance with Rule X(f) of the Hawai'i Court Records Rule.