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Supreme Court
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SCRU-11-0000051

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the Amendment

of the

HAWAI‘I RULES OF CIVIL PROCEDURE

ORDER AMENDING AND ADOPTING RULES AND ADOPTING FORMS
OF THE HAWAI‘I RULES OF CIVIL PROCEDURE

(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

IT IS HEREBY ORDERED that Rules 4, 15, 41, and 72 of the Hawai‘i Rules of Civil Procedure are amended, effective January 1, 2012, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 4. PROCESS.

* * *

(e) **Same: Other service.** Whenever a statute or an order of court provides for service upon a party not an inhabitant of or found within the State, of a summons, or of a notice, or of an order in lieu of summons, service shall be made under the circumstances and in the manner prescribed by the statute or order. Whenever a statute or an order of court requires or permits service by publication of a summons, or of a notice, or of an order in lieu of summons, any publication pursuant thereto shall be made under the circumstances and in the manner prescribed by the statute or order. The publication of summons pursuant to Hawai‘i Revised Statutes §§ 634-23, 634-26, and 634-36, shall not include the

case caption and shall be in a form that substantially complies with Form 1-A of the Appendix of Forms.

* * *

Rule 15. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) Amendments before trial.

(1) AMENDING AS A MATTER OF COURSE. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served.

(2) OTHER AMENDMENTS. ~~In all other cases, [Otherwise]~~ a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A motion or stipulation to amend a pleading shall be accompanied by the proposed amended pleading in Ramseyer formatting (additions underscored and deletions bracketed and stricken). A party filing or moving to file an amended pleading shall reproduce the entire pleading as proposed and shall not incorporate any part of the prior pleading by reference, except with leave of court. If granted or allowed, the amended pleading shall be filed, with Ramseyer formatting removed, and served forthwith.

(3) TIME TO RESPOND. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments during and after trial ~~[to conform to the evidence]~~.

(1) FOR ISSUES TRIED BY CONSENT. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

(2) BASED ON OBJECTION AT TRIAL. If evidence is objected to at the trial on the ground that it is not within the issues made by pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

Rule 41. DISMISSAL OF ACTIONS.

(a) Voluntary dismissal: Effect thereof.

(1) BY PLAINTIFF; BY STIPULATION. An action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal at any time before the return date as provided in Rule 12(a) or service by the adverse party

of an answer or of a motion for summary judgment, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action, in the manner and form prescribed by Rule 41.1 of these rules. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States, or of any state, territory or insular possession of the United States an action based on or including the same claim.

* * *

(c) Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing. The notice of dismissal or stipulation shall be made in the manner and form prescribed by Rule 41.1 of these rules.

* * *

Rule 72. APPEAL TO A CIRCUIT COURT.

* * *

(f) [~~Reserved~~] Briefs; oral argument.

(1) BRIEFS; DEADLINES. The opening brief shall be filed within 40 days after the filing of the record on appeal. The answering brief shall be filed within 40 days after service of the appellant's opening brief. Within 14 days after service of the appellee's answering brief, the appellant may file a reply brief. Reply briefs shall be confined to matters presented in the answering brief. If no reply brief is to be filed, the appellant shall notify the clerk and the appellee in writing of the decision not to file a reply brief, prior to the expiration of the time for filing the reply brief.

(2) REQUIREMENTS. The opening, answering, and reply briefs shall be subject to the page limitations set forth in Rule 28(a) of the Hawai'i Rules of Appellate Procedure and shall include, at a minimum:

(A) a statement of the questions presented for decision;

(B) a brief statement of the facts (that need not duplicate the statement of the case separately required under Rule 72(e));

(C) a concise argument; and

(D) a conclusion specifying the relief sought.

(3) ORAL ARGUMENT. On the filing of the answering brief, the court shall schedule the matter for oral argument, with argument to take place after the deadline for the reply brief.

IT IS FURTHER HEREBY ORDERED that new Rules 3.1, 25.1, and 41.1 of the Hawai'i Rules of Civil Procedure are adopted, effective January 1, 2012, as follows:

Rule 3.1. COPIES, CIVIL INFORMATION SHEET; ADDITIONAL CLAIMS; AND TRANSFERS FROM DISTRICT COURT.

(a) Original and copies required.

(1) TORT CASES: The original and 2 copies of the initial complaint, or any subsequent affirmative pleading, shall be submitted.

(2) TORT CASES IN WHICH THE INITIAL COMPLAINT, OR SUBSEQUENT AFFIRMATIVE PLEADING, IS ACCOMPANIED BY REQUEST TO EXEMPT CASE FROM THE COURT-ANNEXED ARBITRATION PROGRAM: The original and 2 copies of each document shall be submitted.

(3) NON-TORT CASES: The original and 1 copy of the initial complaint, or any subsequent affirmative pleading, shall be submitted.

(b) Civil information sheet. Any initial civil complaint filed pursuant to Rule 3 of the Hawai'i Rules of Civil Procedure shall be accompanied by a civil information sheet that substantially complies with Form 2-A of the Appendix of Forms and shall be completed in full. The original and 2 copies of the civil information sheet shall be submitted.

(c) Additional claims information sheet. Any affirmative pleading filed after the initial complaint is filed shall be accompanied by an additional claims information sheet that substantially complies with Form 2-B of the Appendix of Forms and shall be completed in full. The original and 2 copies of the additional claims information sheet shall be submitted.

(d) Cases transferred from district court.

(1) A civil information sheet shall be submitted for a civil case transferred from the district court to the circuit court. Within 7 days after filing of the notice of docketing, the plaintiff shall submit the civil information sheet.

(2) The plaintiff shall submit to the clerk (A) the original and 1 copy of the civil information sheet, (B) 1 copy of the complaint, and (C) 1 copy of any answer to the complaint.

Rule 25.1. WITHDRAWAL, SUBSTITUTION, AND APPEARANCE OF COUNSEL.

(a) Except as provided in Rule 10(c) of the Rules of the Circuit Courts, withdrawal and substitution of counsel in cases pending before the circuit courts shall be effective only upon the approval of the court and shall be subject to the guidelines of Rule 1.16 of the Hawai'i Rules of Professional Conduct and other applicable law.

(b) A withdrawal and substitution of counsel shall:

(1) Cite the relevant authority for the withdrawal and substitution;

(2) Include the signatures of the withdrawing attorney and the substituting attorney;

- (3) Include the words "APPROVED AND SO ORDERED" and a line below such words for the signature of the judge;
- (4) Indicate the trial date, if any; and
- (5) Include the signature of the represented party indicating the represented party's consent to the withdrawal and substitution.
- (c) A motion to withdraw as counsel shall be served on the represented party and shall:
 - (1) Cite the relevant authority for the withdrawal;
 - (2) Indicate that the represented party has been provided written notice (A) of the represented party's responsibilities under Rule 4 of the Rules of the Circuit Courts, and (B) if the represented party is a corporation, partnership, or other legal entity, that such entity may only appear in the action through counsel admitted to practice in the courts of the State of Hawai'i; and
 - (3) Indicate the represented party's last known address and telephone number.
- (d) An attorney who has not made an appearance in a case on behalf of a party in the pleading commencing the action, an answer, or withdrawal and substitution pursuant to Rule 10(c) of the Rules of the Circuit Courts or section (a) this rule, shall upon undertaking representation of a party immediately file a notice of appearance of counsel, which shall include:
 - (1) the attorney's name, Hawai'i bar identification number, office address and telephone number; and
 - (2) the name of the party represented.

Rule 41.1. DOCUMENTS DISMISSING AN ACTION OR ANY PART THEREOF PURSUANT TO RULES 41(a)(1)(A), 41(a)(1)(B), AND/OR 41(c) OF THE HAWAI'I RULES OF CIVIL PROCEDURE.

- (a) **Presentation of notices of and stipulations for dismissal.**
 - (1) For cases assigned to a judge, the notices of and stipulations for dismissal shall be presented to the assigned judge before filing.
 - (2) For cases in the Court-Annexed Arbitration Program, the notices of and stipulations for dismissal shall be presented to the assigned judge before filing.
 - (3) For cases not assigned to a judge, the notices of and stipulations for dismissal shall be presented to the Legal Documents Branch/Section.
- (b) **Information required in notices of and stipulations for dismissal.**
 - (1) The notices of and stipulations for dismissal shall include the following information:
 - (A) Below the title of the document
 - (i) the name of the judge or "none" if the case is not assigned to a judge and
 - (ii) the trial date or "none" if the trial date has not been set.
 - (B) In the text of the document
 - (i) cite the specific subsections of Rule 41 of the Hawai'i Rules of Civil Procedure applicable to the dismissal and

(ii) if Rule 41(a)(1)(A) is cited, state whether or not the party being dismissed has served an answer or motion for summary judgment.

(2) If the document disposes of the entire action, the document shall be entitled "STIPULATION FOR [OR NOTICE OF] DISMISSAL WITH [OR WITHOUT] PREJUDICE OF ALL CLAIMS AND PARTIES," and shall state in the text of the document "all other claims and parties are dismissed."

(3) If the document dismisses only part of a case

(A) The title of the document shall indicate that it is a partial dismissal and identify the party(ies) and/or claim(s) being dismissed,

(B) The text shall identify the party(ies) and/or claim(s) being dismissed, and

(C) The text shall identify the party(ies) and/or claim(s) that remain in the action or if there are no remaining parties and/or claims such shall be so stated in the text.

(4) Below the signature of counsel, indicate the party(ies) that counsel represents.

IT IS FURTHER ORDERED that Forms 1-A, 2-A, and 2-B, attached hereto, are adopted and shall be appended to the Hawai'i Rules of Civil Procedure, effective January 1, 2012.

IT IS FINALLY ORDERED that, on or before July 1, 2013, the Permanent Committee on Rules of Civil Procedure and Circuit Court Rules shall submit to this court a report characterizing the effectiveness of these rule amendments. The report may include recommendations for further amendments or repeal of any rules.

DATED: Honolulu, Hawai'i, August 26, 2011.

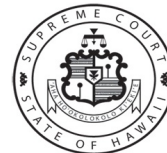
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



IN THE CIRCUIT COURT OF THE () CIRCUIT

STATE OF HAWAI'I

SUMMONS

TO: (defendant's name)

YOU ARE HEREBY NOTIFIED THAT (plaintiff's name), plaintiff, has filed a (complaint or petition) in Civil No. (case #), wherein plaintiff prays for (state relief sought) against you in the above-entitled court.

(If applicable, include description of property)

YOU ARE HEREBY SUMMONED to appear in the courtroom of the HONORABLE (name of judge) at (address), (city), Hawai'i, on (date), 20XX, at (time) o'clock (A. or P.) M., or to file an answer or other pleading and serve it before said day upon (name of plaintiff's attorney), plaintiff's attorney, whose address is (address, city, and state). If you fail to do so, judgment by default will be taken against you for the relief demanded in the (complaint or petition).

DATED: (city), Hawai'i, (date).

(signature of the clerk)
Clerk of Court

INSTRUCTIONS FOR COMPLETING THE CIVIL INFORMATION SHEET

The civil information sheet and the information it contains neither replace nor supplement the filings, the service pleadings or other documents as required by law, except as provided by the rules of court.

This form is required for the purpose of initiating the civil docket sheet.

Consequently, a civil information sheet is required for each civil complaint filed.

The attorney/party filing a civil complaint shall complete the form as follows:

I. PLAINTIFF(S)/DEFENDANT(S)

List names: last, first, middle initial.

If the plaintiff or defendant is a government agency, indicate the full name.

If the plaintiff or defendant is an official of a government agency, first indicate the agency name and then the official's name and title.

If the space provided is insufficient, attach additional page(s) and check the box so indicating.

II. PLAINTIFF'S(S)/DEFENDANT'S(S) ATTORNEY

Indicate the attorney name and license number.

If the space provided is insufficient, attach additional page(s) and check the box so indicating.

III. NATURE OF SUIT

Place a "√" in the appropriate box.

If more than one category applies, select the one category that best describes the action.

Do not select more than one category.

IV. ORIGIN

(A) Original Proceedings: cases originating in the circuit court.

(B) Transfer from District Court: cases transferred from district court under Haw. Rev. Stat. §§ 604-5 (Supp. 2006), 633-31 (1993).

(C) Transfer from another Circuit: cases transferred from another circuit under Haw. Rev. Stat. §§ 603-37, -37.5 (1993)

V. DEMAND

Indicate the remedy being demanded (e.g., damages, preliminary injunction, etc.)

VI. JURY DEMAND

Indicate whether a jury is being demanded.

VII. CLASS ACTION

Indicate whether the action is brought as a class action.

VIII. REQUEST TO EXEMPT FROM ARBITRATION

Indicate whether a "Request to Exempt from Arbitration" is filed.

IX. RELATED CASES

List the civil number and the assigned judge for related pending cases.

X. SIGNATURE OF ATTORNEY OR PARTY

Date and sign the civil information sheet.

FORM 2-B. ADDITIONAL CLAIMS INFORMATION SHEET

ADDITIONAL CLAIMS INFORMATION SHEET																			
I. Filing Party/Attorney	II. Civil No.																		
III. Case Name																			
IV. Title of Pleading																			
<p>V. Does the above pleading join any additional party not previously named? _____ Yes _____ No</p> <p>If "yes," please list each additional party below:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 50%; text-align: center; border-bottom: 1px solid black;"><u>Name(s)</u></th> <th style="width: 45%; text-align: center; border-bottom: 1px solid black;"><u>Party Designation</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">2.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">3.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">4.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">5.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> </tbody> </table> <p><input type="checkbox"/> Additional page(s) attached.</p>			<u>Name(s)</u>	<u>Party Designation</u>	1.			2.			3.			4.			5.		
	<u>Name(s)</u>	<u>Party Designation</u>																	
1.																			
2.																			
3.																			
4.																			
5.																			
<p>VI. Does the above pleading exclude any party previously named? _____ Yes _____ No</p> <p>If "yes," please list each party who has been excluded:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 50%; text-align: center; border-bottom: 1px solid black;"><u>Name(s)</u></th> <th style="width: 45%; text-align: center; border-bottom: 1px solid black;"><u>Party Designation</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">2.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">3.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">4.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> <tr> <td style="text-align: center;">5.</td> <td style="border-bottom: 1px dashed black;"></td> <td style="border-bottom: 1px dashed black;"></td> </tr> </tbody> </table> <p><input type="checkbox"/> Additional page(s) attached.</p>			<u>Name(s)</u>	<u>Party Designation</u>	1.			2.			3.			4.			5.		
	<u>Name(s)</u>	<u>Party Designation</u>																	
1.																			
2.																			
3.																			
4.																			
5.																			
VII. Signature of Filing Party/Attorney	Date																		

INSTRUCTIONS FOR COMPLETING THE ADDITIONAL CLAIMS INFORMATION SHEET

The additional claims information sheet and the information it contains neither replace nor supplement the filings, the service pleadings, or other documents as required by law, except as provided by the rules of court.

This form is required for the purpose of ascertaining the status of parties to the lawsuit.

Consequently, an additional claims information sheet is required for each affirmative pleading filed subsequent to the initial complaint.

The attorney/party filing such affirmative pleading shall complete the form as follows:

I. Filing Party/Attorney

Indicate name, attorney license number, attorney firm name (if applicable), address and telephone number.

II. Civil No.

Indicate the civil number assigned to the case.

III. Case Name

Indicate a brief case title (full caption not necessary). Use of "et al." designation is acceptable.

IV. Title of Pleading

Indicate the exact title of the pleading being filed.

V. Joined Parties and Party Designation

If the space provided is insufficient, attach additional page(s) and check the box so indicating.

Examples of "party designation" are as follows: Additional plaintiff; additional defendant; additional crossclaim-defendant; additional counterclaimant; additional counterclaim-defendant; plaintiff intervenor; defendant intervenor; third-party defendant, etc.

VI. Excluded Parties and Party Designation

Same as Section V above.

VII. Signature of Filing Party/Attorney

Date and sign the Additional Claims Information Sheet.