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Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
RULES EXPEDITING CHILD PROTECTIVE APPEALS

ORDER ADOPTING RULES EXPEDITING CHILD PROTECTIVE APPEALS
(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

In the continuing interest of expediting appeals in child protective actions and upon consideration of the commentary received and the record of the Child Protective Proceedings Pilot Project and the Temporary Rules governing the project,

IT IS HEREBY ORDERED that the Rules Expediting Child Protective Appeals (RECPA) are hereby adopted, effective January 1, 2012, as follows:

Rule 1. SCOPE

These rules shall govern in all appeals from child protective proceedings. “Child protective proceeding” means any court proceeding conducted pursuant to HRS Chapter 587A.

To the extent these Rules to Expedite Child Protective Appeals conflict with the Hawai‘i Rules of Appellate Procedure, these Rules to Expedite Child Protective Appeals shall prevail. In all other respects, the Hawai‘i Rules of Appellate Procedure, the Hawai‘i Electronic Filing and Service Rules, and the Hawai‘i Court Records Rules apply.

Rule 2. 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, may be granted only upon a showing of good cause. Extensions of time for applications for writs of certiorari may be filed in accordance with Rule 40.1 of the Hawai'i Rules of Appellate Procedure.

If a motion for extension of time is made after expiration of the time, the appellate court, absent a showing of good cause for the delay, may assess an appropriate monetary sanction against the late-filing party or counsel.

Parties shall not seek and the clerk shall not grant extensions pursuant to Rule 29(a) of the Hawai'i Rules of Appellate Procedure in child protective appeals.

Rule 3. 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 may assess an appropriate monetary sanction against the responsible party or counsel.

Rule 4. 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 may assess an appropriate monetary sanction against the responsible party or counsel.

Rule 5. 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 6. NOTICE OF APPEAL: CONSENT OF APPELLANT OR CERTIFICATION OF DILIGENT SEARCH.

Unless appellant is a minor child or a state agency, if the appellant is represented by counsel, counsel shall either file the notice of appeal bearing the appellant's signature or shall file contemporaneously an appellant's instructions to file the appeal that substantially complies with Form 1, Appellant's Instruction to File the Notice of Appeal attached to these rules. If counsel is unable to locate the appellant, counsel shall file, contemporaneous with the notice of appeal, a Certificate of Diligent Search that substantially complies with Form 2 attached to these rules.

Rule 7. TRANSCRIPTS.

(a) Manner and number requested. Appellant shall file the appellant's request for transcripts when appellant files the notice of appeal.

(b) Requests for partial transcripts. If all transcripts are not ordered, appellant shall serve the request for partial transcripts on all appellees, along with a statement of points of error the appellant intends to present on appeal, and appellees shall request any other transcripts desired no later than 5 days after appellee was served with appellant's request and statement.

(c) Preparation: By whom, when due. The Office of the Chief Court Administrator shall require that the transcripts are prepared and filed with the appellate court no later than 40 days after the filing of the notice of 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.

(d) Preparation fee. 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.

(e) Failure to timely prepare. If the transcript is not prepared and filed timely, the appellate court may 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, may impose an appropriate sanction.

Rule 8. RECORD ON APPEAL.

The clerk of the trial court shall electronically transmit the record, including transcripts, if any, to the appellate court clerk no later than 40 days after filing of the notice of appeal.

Rule 9. CIVIL APPEALS DOCKETING STATEMENT.

A Civil Appeals Docketing Statement shall not be filed.

Rule 10. 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 11. ABBREVIATED BRIEFS.

(a) Abbreviated Opening Brief. Unless otherwise permitted by the appellate court pursuant to Rule 2 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 Form 3. 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 "HRS Chapter 587A (Child Protective Act) Appeal" as shown on Form 3. An abbreviated opening brief shall include:

- (1) A statement of the nature of the case and the relief sought;
- (2) 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;
- (3) A statement of the points of error presented for appeal.

Each point of error shall include:

- (A) clear identification of the specific point of error;
 - (B) reference to the part of the record where the error occurred;
 - (C) how each point was preserved for appeal, with a reference to the part of the record where the alleged error was preserved; and
 - (D) the applicable standard of review for the point of error.
- (4) Concise legal argument about each point of error with citation to legal authority;
- (5) 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
- (6) 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 2 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 Form 4. 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 587A (Child Protective Act) Appeal” as shown on Form 4. 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 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 587A (Child Protective Act) Appeal.” 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 12. 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 13. MOTIONS FOR ATTORNEYS’ FEES AND COSTS.

No later than 14 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 14. 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 15. 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.

IT IS FURTHER ORDERED that RECPA Forms 1 through 4, attached hereto, are adopted and shall be appended to the Rules Expediting Child Protective Appeals, effective January 1, 2012.

DATED: Honolulu, Hawaii, December 27, 2011.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



RECPA Form 1. Appellant's Instruction to File the Notice of Appeal.

No. _____

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

HRS CHAPTER 587A (CHILD PROTECTIVE ACT) APPEAL

IN THE INTEREST OF

[INITIALS]

) FC-S No. _____
)
)
) FAMILY COURT OF THE
) [specify circuit] CIRCUIT
)
)
)
)

APPELLANT'S INSTRUCTION
TO FILE THE NOTICE OF APPEAL

1. I, _____ [Name of Appellant] _____, am a party in the above-captioned case.
2. I wish to appeal the decision of the lower court or agency, and, therefore, approve of my attorney filing the notice of appeal in the above-captioned case.

I hereby declare that the above statement is true.

Dated this ____ day of _____, 20__.

[Party's Signature]

[Party's machine printed name]

No. _____

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

HRS CHAPTER 587A (CHILD PROTECTIVE ACT) APPEAL

IN THE INTEREST OF

[INITIALS]

) FC-S No. _____
)
)
) FAMILY COURT OF THE
) [specify circuit] CIRCUIT
)
)
)
)

CERTIFICATE OF CONVENTIONAL SERVICE

I certify that a paper copy of the foregoing Appellant’s Instruction to File the Notice of Appeal was duly served upon Appellee or Appellee’s counsel (if represented)

___ in person at _____ [address] _____ on _____ [date] _____.
___ by mail at _____ [address] _____ on _____ [date] _____.
___ by certified mail at _____ [address] _____ on _____ [date] _____.

Dated this ___ day of _____, 20__.

[Party’s or Attorney’s Signature]

[Party’s or Attorney’s machine printed name]
Counsel for Appellant

RECPA Form 2. Counsel's Certificate of Diligent Search.

No. _____

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

HRS CHAPTER 587A (CHILD PROTECTIVE ACT) APPEAL

IN THE INTEREST OF) FC-S No. _____
)
[INITIALS])
) FAMILY COURT OF THE
) [specify circuit] CIRCUIT
)
)
)
_____)

COUNSEL'S CERTIFICATE OF DILIGENT SEARCH

1. I, _____ [Name of Counsel] _____, am counsel for Appellant [Name of Appellant] _____ 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 [city] _____ 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__.

[Party's or Attorney's Signature]

[Party's or Attorney's machine printed name]

[Address]

[Telephone No.]

[Fax No.]

[Email Address]

Counsel for Appellant

No. _____

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

HRS CHAPTER 587A (CHILD PROTECTIVE ACT) APPEAL

IN THE INTEREST OF

[INITIALS]

) FC-S No. _____
)
)
) FAMILY COURT OF THE
) [specify circuit] CIRCUIT
)
)
)
)

CERTIFICATE OF CONVENTIONAL SERVICE

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

___ in person at _____ [address] _____ on _____ [date] _____.
___ by mail at _____ [address] _____ on _____ [date] _____.
___ by certified mail at _____ [address] _____ on _____ [date] _____.

Dated this ___ day of _____, 20__.

[Party’s or Attorney’s Signature]

[Party’s or Attorney’s machine printed name]
Counsel for Appellant

RECPA Form 3. Abbreviated Opening Brief and Certificate of Conventional Service.

No. _____

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

HRS CHAPTER 587A (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] CIRCUIT

)

) [list judges]

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

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

[Address]

[Telephone No.]

[Fax No.]

[Email Address]

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] Circuit in a Child Protective Act proceeding, under Hawai'i Revised Statutes Chapter 587A.

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:

- a. The title of each judgment, decree, or order appealed from.
 - i. The date each was filed.
 - ii. The record citation for each.
- b. The finding of fact, conclusions of law, or other ruling claimed to be in error.
 - i. How this claimed error was preserved for appeal.
 - ii. Citation to the record where this preservation will be found.

See Hawai'i Rules of Appellate Procedure Rule 28(b).

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

No. _____

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

HRS CHAPTER 587A (CHILD PROTECTIVE ACT) APPEAL

IN THE INTEREST OF

[INITIALS]

) FC-S No. _____
)
)
) FAMILY COURT OF THE
) [specify circuit] CIRCUIT
)
)
)
)

CERTIFICATE OF CONVENTIONAL SERVICE

I certify that a paper copy of the foregoing Appellant’s Abbreviated Opening Brief was duly served upon Appellee or Appellee’s counsel (if represented)

___ in person at _____ [address] _____ on _____ [date] _____.
___ by mail at _____ [address] _____ on _____ [date] _____.
___ by certified mail at _____ [address] _____ on _____ [date] _____.

Dated this ___ day of _____, 20__.

[Party’s or Attorney’s Signature]

[Party’s or Attorney’s machine printed name]
Counsel for Appellant

RECPA Form 4. Abbreviated Answering Brief and Certificate of Conventional Service.

No. _____

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

HRS CHAPTER 587A (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] CIRCUIT

)

) [list judges]

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

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

[Address]

[Telephone No.]

[Fax No.]

[Email Address]

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. 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."

5. 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):

6. RELATED APPEALS:

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

Dated this ___ day of _____, 20__.

Respectfully submitted,

[Party's or Attorney's Signature]

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

No. _____

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

HRS CHAPTER 587A (CHILD PROTECTIVE ACT) APPEAL

IN THE INTEREST OF

[INITIALS]

) FC-S No. _____
)
)
) FAMILY COURT OF THE
) [specify circuit] CIRCUIT
)
)
)
)

CERTIFICATE OF CONVENTIONAL SERVICE

I certify that a paper copy of the foregoing Appellee’s Abbreviated Answering Brief was duly served upon Appellee or Appellee’s counsel (if represented)

___ in person at _____ [address] _____ on _____ [date] _____.
___ by mail at _____ [address] _____ on _____ [date] _____.
___ by certified mail at _____ [address] _____ on _____ [date] _____.

Dated this ___ day of _____, 20__.

[Party’s or Attorney’s Signature]

[Party’s or Attorney’s machine printed name]
Counsel for Appellant