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Supreme Court
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SCRU-10-0000115

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
RULES OF THE DISTRICT COURT OF THE STATE OF HAWAI‘I

ORDER ADOPTING AND AMENDING RULES OF
THE DISTRICT COURT OF THE STATE OF HAWAI‘I
(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

IT IS HEREBY ORDERED that Rule 1.1 is adopted, and Rules 2, 2.2, 3, 5, 6, 21, 23, 25, and 32 are amended, of the Rules of the District Court of the State of Hawai‘i, effective June 18, 2012, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 1.1. INTERPRETATION; EFFECTS OF E-FILING AND AUTOMATION.

(a) Interpretation and enforcement of rules. These rules shall be read and construed with reference to each other, the Hawai‘i Electronic Filing and Service Rules, and the Hawai‘i Court Records Rules. In any conflict amongst the Rules of the District Court of the State of Hawai‘i, the Hawai‘i Court Records Rules, and the Hawai‘i Electronic Filing and Services Rules, the Hawai‘i Electronic Filing and Service Rules shall prevail.

(b) Effect of Hawai'i Electronic Filing and Service Rules.

Documents filed and notices given in accordance with the Hawai'i Electronic Filing and Service Rules shall be deemed to comply with any filing or notice requirements of any part of these Rules of the District Courts of the State of Hawai'i.

Notwithstanding any language in these Rules of the District Courts of the State of Hawai'i requiring the filing or service of additional paper copies of documents, such copies are not required for documents filed through the Judiciary Electronic Filing System (JEFS).

(c) Effects of automation on processes and procedures. Duties set out in these rules may be performed by automation.

(d) Conflicts with other rules of court. To the extent there is conflict between these rules and the District Court Rules of Civil Procedure, the Rules of the Small Claims Division of the District Court, or the Hawai'i Rules of Penal Procedure, the latter shall prevail.

Rule 2. FILING PROCEDURE BY THE CLERK.

(a) Case number. Upon the filing of the initial pleading or other [papers]documents, and before the issuance of process, the clerk shall assign a number to such proceeding. All subsequent pleadings and [papers]documents to be filed shall bear the number assigned to the initial [papers]documents, which shall appear on the first page.

(b) Stamp by clerk. For conventionally filed documents, t[F]he clerk shall promptly stamp the time and date upon all [papers]documents filed.

(c) Docket entry and filing. Upon the filing of any [civil] [papers]document, an appropriate entry shall be made in a docket sheet kept for each case. A "docket sheet" may be an electronic record within a court maintained computer.

(d) Service of pleadings and other [papers]documents.

(1) FILING: ORIGINAL KEPT ON FILE; COPIES FOR SERVICE. For conventionally filed documents and s[S]ubject to subsection (2) of this subsection (d)[;] pertaining to questions and other discovery [papers] documents, when a pleading or other [paper] document requiring service is presented for filing, the original shall be accompanied with a sufficient number of copies for service. The original shall be kept on file by the clerk. For conventionally filed documents and those parties not registered with JEFS, s[S]ervice may be made with the certified copy or copies of the [papers] documents together with the certified copy or copies of the summons, and the serving officer shall make proof of service to the court promptly by returning the original summons to the clerk.

(2) SERVICE AND FILING OF QUESTIONS AND OTHER DISCOVERY [PAPERS]DOCUMENTS. Unless otherwise provided by the Hawai'i Electronic Filing and Service Rules, t[F]he filing of questions and other discovery [papers]documents shall be governed by Rule 5 of the District Court Rules of Civil Procedure. If conventionally served, a [A] party seeking admissions or answers to questions shall serve [two] 2 copies of the request for admissions or questions upon the party from whom the admission of answers are sought.

...

(f) Place of filing; assignment to division. Except as provided by the Hawai'i Electronic Filing and Service Rules, [P]pleadings and [papers] documents for filing shall be presented to the office of the clerk[; except as otherwise directed by the court]. The clerk shall furnish certified copies of all [papers] documents filed if so requested at the time of filing. The administrative judge may designate the division to which a case or class of cases may be assigned.

(g) Electronic filing of documents submitted on paper; filing date and time preserved. Pursuant to Rule 2.5 of the Hawai'i Electronic Filing and Service Rules, the clerk shall electronically file any paper document submitted to the clerk. The receipt date and time reflected on the conventionally filed document and subsequently filed in JIMS shall be deemed the filing date for all purposes under any of the Hawai'i Rules of Court. Once electronically filed, the clerk shall not retain the paper document.

Rule 2.2. COSTS AND FEES TO BE COLLECTED BY THE CLERK.

The clerk shall collect costs and fees provided by Chapter 607 of the Hawai'i Revised Statutes except that the clerk shall collect the amounts specified herein as follows:

1. For copies of any document in any public record maintained by the clerk:
 - a. [i]In the clerk's office: [i:]\$1.00 for the first page and [ii:]\$0.50 for each additional page
 - b. [i]In an off-site storage location: \$5.00 plus usual copying charge
 - c. [o]On microfilm:
 - i. \$5.00 when provided by the clerk plus \$1.00 per page
 - ii. \$1.00 per page when obtained via self-service
2. For telefaxing of any document in any public record, the applicable charges plus:
 - i. [w]Within Hawai'i: \$2.00 first page and \$1.00 each additional page
 - ii [o]Outside Hawai'i, within the United States (including American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands): \$5.00 first page and \$2.00 each additional page
 - iii. [o]Outside the United States: \$10.00 first page and \$5.00 each additional page
3. For copies of audio tapes, electronic copy of any document: \$10.00
4. For copies of video tapes: cost of production
5. For any expedited or rush requests (copy(ies) provided within 4 hours if request received before noon): \$10.00 plus all other applicable charges
6. Ex officio filing (in addition to the usual filing fee): \$10.00
7. Certification under seal of a copy of a pleading or other [paper]document subsequent to the initial filing of the pleading or [paper]document, except the record on appeal: \$2.00
8. For Traffic Court Record Report (non-parking; when a report is available): [i:] \$1.00 for the first page and [ii:]\$0.50 for each additional page

9. For Traffic Court Record Report with clerk's notes (non-parking; when a report is available): [~~+~~] \$1.00 for the first page and [~~+~~] \$.50 for each additional page.

10. Parties to a pending case shall not be charged for the first copy of the court order, opinion, judgment or any other item entered in the case by the court, whether provided on paper or electronically.

11. The clerk shall charge the actual cost of mailing paper copies of any item, provided that the parties to a pending case shall not be charged for the mailing of the first [~~paper~~] copy of a court order, opinion, or other item entered in the case by the court.

12. The court may waive costs and fees for good cause shown. In lieu of copying and mailing fees, the administrative judge may authorize the clerk to provide copies of orders, opinions, or other items to publishing companies in exchange for published materials for the benefit of the court or the judiciary.

Rule 3. FORM OF PLEADINGS AND MOTIONS.

(a) Form. Unless otherwise required by the Hawai'i Electronic Filing and Service Rules, a [~~A~~] all pleadings and other documents [~~papers~~] to be filed shall be typewritten, printed, photocopied, or otherwise similarly prepared by a duplication process that will produce clear, permanent and legible copies, upon unruled, opaque, unglazed white paper of standard quality not less than [~~thirteen~~] 13 pound weight, 8½ x 11 inches in size with a portrait orientation and each sheet shall have a margin [~~at the top and bottom of~~] all around of at least 1 inch (except as otherwise provided in paragraph (c) of this rule). [~~The left-hand and right-hand side margin shall not be less than 1 inch.~~] Such [~~papers~~] documents shall be typewritten in heavily inked black ribbon or printed in black. The type shall be standard 12 point pica or equivalent. Copies, but not originals, may be two-sided. The lines on each page shall be double-spaced or one and one-half spaced; provided, however, descriptions of real property and quotations may be single spaced. All pages shall be numbered consecutively at the bottom and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified size and, when prepared by a machine-copying process, shall be equal to typewritten material in legibility and permanency of image. Signatures and all other handwritten entries on papers shall be in ink. The name of the person signing the pleading or [~~paper~~] document shall be typed or printed in block letters directly below the signature.

(b) No flyleaf shall be attached to any [~~paper~~] document, except as provided by Rule 9 of the Hawai'i Court Records Rules. If filed conventionally, [~~All papers~~] documents shall be filed without backs. All documents filed [~~and~~] shall be neat, clean, legible and free of interlineations.

(c) Form of first page. The first page of all [~~papers~~] documents, except for court forms and except as provided in (d) of this rule, shall be in the following form:

(1) The space at the top left of the center of the page shall contain the name, code number, office address, electronic mail address, telephone, and facsimile number of the attorney for the party in whose behalf the [~~paper~~] document is filed, or of the party if appearing in person;

* * *

(d) Two pleadings filed together. Where ~~two~~ 2 or more pleadings or other [papers]documents are filed together, only the first page of the first [paper]document shall follow all of the requirements of (c) of this rule, and in addition thereto, there shall be listed, after the case number and before the character of the [paper]document, the character of all of the [papers]documents that are being filed together. The top of the first page of each [paper]document other than the first shall start with the name of the court and include the class and case number, the title of the cause and the character of the [paper]document, in appropriate spaces as set forth in (c) of this rule.

* * *

(g) Filing by facsimile. When electronic filing is not required, [papers]documents and pleadings may be filed by facsimile transmission if permitted by the local administrative judge and clerk.

(h) Filing by mail. When electronic filing is not required, [papers]documents and pleadings required or permitted to be filed in the district courts may be filed by mail addressed to the clerk, but filing shall not be considered timely unless the [papers]documents are received by the clerk within the time fixed for filing.

Rule 5. SERVICE OF [PAPERS]DOCUMENTS AND PROOF THEREOF.

(a) Service required. In all civil actions, pleadings and [papers]documents shall be served either electronically, pursuant to Rule 6 of the Hawai'i Electronic Filing and Service Rules if the case is filed through JEFS, or, for conventionally served documents, as provided in the District Court Rules of Civil Procedure.

(b) Proof of service. Proof of service may either be provided electronically for cases filed through JEFS, or may be by written acknowledgment of service, by affidavit of the person making service, or by any other proof satisfactory to the court, unless otherwise provided by law or by the District Court Rules of Civil Procedure. A party who has been prejudiced by failure to receive due notice or to be served, or who has been prejudiced by reason that service was made by mail, may apply to the court for appropriate relief.

Rule 6. WITHDRAWAL OF [PAPERS]DOCUMENTS AND EXHIBITS.

For pleadings and documents in paper records, t[he] clerk shall not permit [no]any pleading or [paper]document to be taken from the clerk's custody except as provided by Rule 2(d) or as ordered by the court. Exhibits may be withdrawn on the written approval of the court against a written receipt therefor, and the party shall file a copy in its place unless otherwise ordered. The parties in all civil actions shall withdraw all exhibits not attached to the pleadings, and all interrogatories, answers thereto, and depositions within [one] 1 year after

final judgment, unless otherwise ordered. If not so withdrawn, they shall be deemed abandoned and may be disposed of by the clerk.

Rule 21. SUBMISSION OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(a) The party who prevails after the presentation of evidence shall upon request submit to the court proposed findings of fact and conclusions of law pursuant to Rule 52, District Court Rules of Civil Procedure. The party required to prepare such proposed findings of fact and conclusions of law shall have 10 days, unless such time is extended by the court, to draft the same and secure the approval as to form of opposing counsel thereon. ~~[and deliver the original and one copy to the court, or, if not so approved, serve a copy thereof upon each party who has appeared in the action and deliver the original and one copy to the court.]~~ If the form of the proposed findings of fact and conclusions of law has not been approved, a party served with the proposed findings and conclusions may within 5 days thereafter serve and deliver to the court objections and a copy of the objecting party's proposed findings and conclusions. The court shall determine the findings of fact and conclusions of law to be entered.

If after the conclusion of all testimony, the court does not indicate which party has prevailed in the action, the respective parties involved may be requested to submit proposed findings of fact and conclusions of law.

(b) Cases maintained as paper records. The prevailing party shall deliver the original and 1 copy to the court, or, if not so approved, serve a copy thereof upon each party who has appeared in the action and deliver the original and 1 copy to the court.

(c) Cases maintained in JIMS. Proposed findings and conclusions shall be submitted in accordance with Rule 9 of the Hawai'i Electronic Filing and Service Rules.

Rule 23. SETTLEMENT OF JUDGMENTS AND ORDERS.

Within 10 days after decision of the court awarding any judgment or order that requires settlement and approval by the court, the prevailing party, unless otherwise ordered by the court, shall prepare a judgment or order in accordance with the decision, attempt to secure the approval as to form of opposing parties thereon, and following such approval file it with the court electronically or, if the case is not within JIMS, deliver an~~the~~ original paper document and ~~one~~ 1 copy to the court. If there is no objection to the form of a proposed judgment, or order, the party shall promptly approve as to form. In the event a proposed judgment or order is not approved as to form by an opposing party within 5 days of a written request for such approval, the prevailing party shall file electronically, pursuant to the Hawai'i Electronic Filing and Service Rules or, if exempt, shall deliver the original and ~~one~~ 1 copy to the court along with notice of service on all parties and serve a copy thereof upon each party who has appeared in the action. If any party objects to a proposed judgment or order, the objecting party shall within 5 days thereafter, serve upon the prevailing party and deliver to the court a statement of the party's objections and

the reasons therefor, and the party's proposed judgment or order; and in such event, the court shall proceed to settle the judgment or order. Failure to file and serve objections and a proposed judgment or order shall constitute approval as to form of the prevailing party's proposed judgment or order.

When a party objects to the proposed findings of fact, the objecting party must file proposed alternate findings of fact with the statement of objections.

Rule 25. ORDER FOR TRANSCRIPT OF EVIDENCE.

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(b) For appeal. The Hawai'i Rules of Appellate Procedure relating to transcripts, including, when applicable, Exhibit A relating to child protective proceedings, shall govern requests for transcripts for purposes of appeal.

Rule 32. ~~[INAPPLICABILITY OF RULES.]~~ RESERVED.

~~[To the extent that there is any conflict between these rules and the District Court Rules of Civil Procedure, the Rules of the Small Claims Division of the District Court, or the Hawai'i Rules of Penal Procedure, the latter shall prevail.]~~

DATED: Honolulu, Hawai'i, April 23, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

