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SCRU-11-0000582

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
HAWAI'I FAMILY COURT RULES

ORDER AMENDING THE HAWAI'I FAMILY COURT RULES
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that the Hawai'i Family Court Rules
are amended and attached hereto in its entirety, effective
January 1, 2015.

DATED: Honolulu, Hawai'i, November 5, 2014.

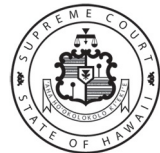
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



HAWAII FAMILY COURT RULES

PART A. GENERAL RULES

I. SCOPE OF RULES - ONE FORM OF ACTION

Rule 1. ~~[SCOPE OF RULES:]~~ **SCOPE: CONSTRUCTION AND APPLICATION OF RULES.**

(a) **Scope.** These rules govern the procedure in the family courts of the State in all suits of a civil nature with the exceptions stated in Rule 81 of these rules. ~~[They]~~

(b) **Construction and Application.** These rules shall be construed ~~[to secure]~~ and applied in such manner as will advance the ~~[just]~~ fair, equitable, speedy[;] and inexpensive determination of every action.

Rule 1.1. **CLASSIFICATION OF ACTIONS.**

Actions in the Family Court are classified as follows and shall be assigned case numbers preceded by the prefix indicated:

- (1) Actions for divorce, separation, and annulment (FC-D)
- (2) Actions for civil union divorce, separation, and annulment (FC-CU)
- (3) Actions for paternity (FC-P)
- (4) Actions for an Order for Protection (FC-DA)
- (5) Actions for Orders under the Child Protective Act (FC-S)
- (6) Criminal Prosecutions of Adults (FC-CR)
- (7) Adjudication of Juvenile Offenders (FC-J)
- (8) Guardianships of the Person of Minors or Incapacitated Adults (FC-G)
- (9) Actions under the Dependent Adult Protective Services Act (FC-AA)
- (10) Actions under the Uniform Interstate Family Support Act (UIFS)
- (11) Actions under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
- (12) Appeals to the Family Court from the Decisions and Orders of the Office of Child Support Hearings (FC-AP)
- (13) Actions for adoption (FC-A)
- (14) Any other miscellaneous action over which the Family Court has jurisdiction (FC-M)

Rule 2. **CIVIL ACTION.**

Any case over which the family courts have exclusive, original jurisdiction, except a case against an adult charged with a criminal offense, shall be a “civil action” for the purpose of these rules.

Rule 2.1. **COMPLIANCE WITH THESE RULES.**

The court may impose sanctions for non-compliance with these rules, including but not limited to the sanctions authorized in Rule 37(b)(2) and 89 of these rules.

II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 3. **COMMENCEMENT OF ACTION.**

A civil action is commenced by filing a complaint with the court. “Complaint” includes any initial pleading required by statute.

Rule 4. PROCESS.

(a) **Summons: Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff for service by a person authorized to serve process. Upon request of the plaintiff, separate or additional summons shall issue against any defendant, cross-defendant, or cross-plaintiff.

- (b) **Summons: Form.** The summons shall
- (1) be signed by the clerk under the seal of the court,
 - (2) contain the name of the court, and the names of the parties, and the date when issued,
 - (3) be directed to the defendant or cross-defendant,
 - (4) state the name and address of the plaintiff's or cross-plaintiff's attorney, if any, otherwise the plaintiff's or cross-plaintiff's address,
 - (5) state the time within which these rules require the defendant or cross-defendant to appear and defend, and shall notify the defendant or cross-defendant that, in case of the defendant's or cross-defendant's failure to do so, judgment by default will be rendered against the defendant or cross-defendant for the relief demanded in the complaint,
 - (6) contain a prohibition against personal delivery of the summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the family or circuit courts permits, in writing on the summons, personal delivery during those hours, and
 - (7) contain a warning to the person summoned that failure to obey the summons may result in an entry of default and default judgment.

When, under Rule 4(e) of these rules, service is made pursuant to a statute or [rule of court] order, the summons or notice, or order in lieu of summons, shall correspond [as nearly as may be] to that required by the statute or [rule] order.

(c) **Summons: By whom served.** Service shall be made:\

- (1) anywhere in the State by the sheriff or the sheriff's deputy, by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age; or

- (2) in any county by the chief of police of that county or [the chiefs] a duly authorized subordinate. Subpoena, however, [may] shall be served as provided in Rule 45 of these rules.

(d) **Summons: Personal service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

- (1) Upon an individual other than a child or an incompetent person,
 - (A) by delivering a copy of the summons and of the complaint to the individual personally or in case the individual cannot be found by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or
 - (B) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.
- (2) Upon a child, by delivering a copy of the summons and of the complaint personally
 - (A) to the parent or parents, custodian, or guardian of the minor or as provided by order of the court and
 - (B) except as required by statute, if the child is 16 years or over, also to the child; and
- (3) Upon an incompetent person, by delivering a copy of the summons and of the complaint personally
 - (A) to the guardian of the incompetent person or to the guardian or conservator of the incompetent person's property, or if the incompetent person is living in an institution, care facility or care home, then to the director or chief executive officer of the institution or owner or operator of the care facility or care home, or if service cannot be made upon either of them, then as provided by order of the court, and

(B) unless the court otherwise orders, also to the incompetent person.

(4) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by mailing a copy to the defendant.

(5) Upon the State, by delivering a copy of the summons and of the complaint to the attorney general of the State, or to the assistant attorney general or to any deputy attorney general who has been appointed by the attorney general.

(6) Upon an officer or agency of the State, by serving the State and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this Rule.

(7) Upon a county, as provided by statute or the county charter, or by delivering a copy of the summons and of the complaint to the corporation counsel or county attorney or any of the deputies.

(8) Upon an officer or agency of a county, by serving the county and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copies shall be delivered as provided in paragraph (4) of this subdivision of this rule.

(9) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute.

(e) Summons: Other service.

(1) Whenever a statute or an order of court provides for service upon a party not ~~[an inhabitant]~~ resident 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.

(2) 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. Whenever the publication in a newspaper of any summons, process, notice or order is permitted, evidence of such publication shall be given by the affidavit or declaration of the editor, publisher, manager, foreman, clerk or printer of such newspaper, not interested in the suit, action, matter or proceeding to which such publication relates, to which affidavit or declaration shall be attached a copy of such summons, process, notice or order, and which affidavit or declaration shall also specify the dates and times when and the newspaper in which the publication was made. Said affidavit or declaration shall be filed with the clerk before the time fixed for hearing.

(3) Whenever a statute or order of court requires or permits service by posting the pleadings and summons at a courthouse and sending a certified copy of the pleadings and summons to the individual's last known address by certified mail with a return receipt requested and a directive to deliver to addressee only, service shall be made under the circumstances and in the manner prescribed by the statute or order.

(f) Territorial limits of effective service. All process may be served anywhere within the State and, when a statute or order so provides, beyond the limits of the State.

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to process. When service is made by any person specially appointed by the court, that person shall make an affidavit or declaration of such service.

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Rule 5. FILING AND SERVICE [AND FILING] OF PLEADINGS AND OTHER PAPERS ON PARTIES.

(a) **Service: When required.** Every order ~~[required by its terms to be served]~~, every pleading subsequent to the original complaint unless the court otherwise orders ~~[because of numerous defendants]~~, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, brief or memorandum of law, offer of judgment, form of order, judgment or decree proposed to the court, or other written communication to the court, bill of costs, designation of record on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4 of these rules.

(b) **Service: How made.** Whenever under these rules service is required or permitted to be made upon a party and that party is represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by ~~[leaving it with the clerk of the court.]~~ any other method authorized by Rule 4(e) of these rules. Delivery of a copy within this [r]Rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the party's office is closed or the ~~[person to be served]~~ party has no office, leaving it at the ~~[person's]~~ party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) ~~[Service: Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.]~~

Proof of service. Proof of service may be by written acknowledgment of service, by affidavit or declaration of the person making service, or by any other proof satisfactory to the court, unless otherwise provided by these rules, order of the court, or statute. 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.

(d) **Filing.** Except as provided in subdivision (f) of this rule, all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(e) **Filing with the court defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Any other rule to the contrary notwithstanding, the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules. Proposed findings, conclusions, orders, or judgments submitted for signature shall be dated and stamped "lodged" or "received" by the clerk and transmitted to the court for consideration.

(f) **Nonfiling of discovery materials.** A deposition, interrogatory, request for discovery production or inspection, request for documents, request for admissions, and answers and responses thereto shall not be filed automatically with the court; provided that on a motion or at trial any such document shall be filed when offered in evidence or submitted as an exhibit~~[-and further provided that a~~

~~deposition taken outside this state or a deposition taken by an officer who is discontinuing the occupation of taking depositions shall be promptly filed pursuant to Rule 30(f)(1)].~~ In addition the court may at any time, on ex parte request or sua sponte, order the filing of any discovery material.

Rule 5.1. NOTICE IN PROCEEDINGS RELATING TO CHILD IN FOSTER CARE.

In any judicial proceeding held with respect to a child in foster care or pursuant to Chapter 587A of the Hawai'i Revised Statutes, the foster parents, pre-adoptive parents, and/or relative caregivers of the child, or their attorney, shall be duly notified in writing of the proceeding. The petitioning party shall bear the burden of preparing and serving notice. Notice shall include the name of the court and names of the parties, as well as the date, time, location, and nature of the proceeding. Unless otherwise ordered by the court, [N]notice shall be served at least 24 hours before a hearing for temporary foster custody and 48 hours before [the] any other scheduled proceeding, subject to a shortening of time when a proceeding is set within a shorter time frame. If notice is not served, no proceeding shall be held except as ordered by the court upon good cause shown. Failure to provide notice as required herein may result in sanctions pursuant to Rule 89(b) of these rules.

Rule 6. TIME.

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. As used in this rule, "holiday" includes any day designated as such pursuant to section 8-1 of the Hawai'i Revised Statutes.

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court [~~for cause shown~~] may [~~at any time~~] in its discretion

(1) with or without motion or notice order, upon showing of good cause, the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 59(b), (d) and (e) and 60(b) of these rules and Rule 4(a) of the Hawai'i Rules of Appellate Procedure, except to the extent and under the conditions stated in them.

(c) ~~[Deleted]~~ **Reserved.**

(d) **For motions; affidavits or declarations.** A written motion, other than a motion pursuant to Rule 56, 59, and one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than 48 hours before the time specified for hearing, provided that whenever a motion which seeks relief *pendente lite* is served on the adverse party by mail in a circuit other than where the motion is filed, such service shall be made not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court, and provided further that whenever the motion is served upon the adverse party outside of the State, such service shall be made not later than 20 days before the time specified for hearing, unless different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit or declaration, the affidavit or declaration shall be served with the motion [~~and, except as otherwise provided in Rule 59(c), opposing affidavits may be~~]. A response shall be served not later than the day preceding the hearing, unless the court permits [them] it to be served at some other time.

(e) **Additional time after service by mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 2 days shall be added to the prescribed period.

III. PLEADINGS AND MOTIONS

Rule 7. **PLEADINGS ALLOWED[; FORM OF MOTIONS].**

~~[(a) —Pleadings:]~~ There shall be a complaint, petition, application or written request, as required by statute, and an answer that may include a counterclaim and/or cross-claim(s); a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14 of these rules; and a third-party answer, if a third-party complaint is served. No other initial pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

~~[(b) —Motions and other papers:~~

~~(1) —An application to the court for an order shall be by motion, which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.~~

~~(2) —The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.~~

~~(3) —Deleted.~~

~~(4) —The form of pleadings and motions shall comply with the Rules of the Circuit Courts.~~

~~(5) —Any motion seeking an order for or modification of financial or monetary relief of any kind, except for an award of attorney's fees in enforcement proceedings, shall have attached, typewritten, unless otherwise permitted by the court for good cause shown, income and expense and asset and debt statements on the forms provided by the court or equivalent forms, executed by the movant and duly notarized or executed under penalty of perjury, and any person responding to such motion shall prepare and submit to the court and the movant, no later than 48 hours prior to the hearing of such motion, unless the date of the hearing is less than 5 working days after service of said motion on the respondent, income and expense and asset and debt statements on the forms provided by the court or equivalent forms, executed by such respondent and duly notarized or executed under penalty of perjury. Where the time between service and the hearing date is less than 5 working days, such statements shall be submitted not later than immediately prior to the hearing. The sanctions provided in Rule 37(b)(2) shall apply in the event of failure to comply with this rule.~~

~~(c) —Demurrers, pleas, etc., abolished. Demurrers, pleas, exceptions for insufficiency of a pleading and motions for bills of particulars shall not be used.]~~

Rule 7.1. **FORMATTING OF DOCUMENTS.**

~~(a) **Form.** All pleadings, motions, and other documents to be filed shall be typewritten, printed, photocopied, or otherwise similarly prepared by a duplication process that will produce clear and permanent copies equally legible to printing, upon unruled, opaque, unglazed white paper of standard quality not less than 13 pound weight, 8 ½ x 11 inches in size. Each sheet of text shall have a margin at the top and bottom of 1 inch (except as otherwise provided in paragraph (c) of this rule). Each sheet of text shall have a left-hand and right-hand side margin and each margin shall be not less than 1 inch. The text of all documents shall be printed in black. The type shall be standard 12 point pica or equivalent. Copies, but not originals, may be two-sided, and 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. Original signatures and all other original hand-written entries on documents shall be in black or blue ink.

(b) **No flyleaf shall be attached to any document.** No flyleaf shall be attached to any document. All documents shall be filed without backs and shall be neat, clean, legible and free of interlineations.

(c) **Form of first page.** The first page of each document, except as provided hereinbelow in (d) shall be in the following form:

(1) The space at the top left of the center of the page shall contain the name, attorney number, office address and telephone number of the attorney for the party on whose behalf the document is filed, or the name, address and telephone number of the party if he/she is representing himself or herself;

(2) The space at the top right of the center of the page shall be left blank for the use of the clerk of the court;

(3) Next, there shall be centered the name of the court, which shall be not less than 3 inches from the top of the page;

(4) Next, the space to the left of the center of the page shall contain the title of the case (which title shall include the names of all of the parties in the initial pleading, but thereafter may be appropriately abbreviated).

(5) In the space to the right of the title to the case, there shall be listed the case number, the title of the document, and the title of each additional document that is attached (see below).

(6) Next, there shall be centered the title of the document itself.

(d) **Two or more documents filed together.** Where 2 or more documents are filed together, only the first page of the first document shall follow all of the requirements of (c) hereinabove; and in addition thereto, there shall be listed, after the case number and before the centered title of the document, the title of all of the documents that are being filed together. Each document after the first document shall start with the name of the court and include the case number, the title of the case and the title of the document, in appropriate spaces as set forth in (c) hereinabove.

Rule 8. GENERAL RULES OF PLEADING.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain

(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and

(2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11 of these rules.

(c) Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and

any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Demurrers, pleas, etc., abolished. Demurrers, pleas, exceptions for insufficiency of a pleading and motions for bills of particulars shall not be used.

(e) Effect of failure to deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(f) Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth 2 or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11 of these Rules.

(3) Paragraphs; separate statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(4) Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(g) Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

(h) Appearance and waiver. Any defendant named in a complaint ~~[or respondent to any motion]~~ or petition may execute a form of appearance and waiver of notice or further notice of hearing on the complaint or ~~[motion]~~ petition at any time after receiving a copy of the filed or unfiled complaint or ~~[filed motion]~~ petition. The appearance and waiver shall be filed within a reasonable time before the date of the hearing on said complaint or ~~[motion]~~ return date of the summons to the complaint or petition. Upon the filing of an appearance and waiver, all averments in the complaint or ~~[motion]~~ petition shall be deemed admitted and the hearing on the complaint or ~~[motion]~~ petition shall proceed without further notice to the defendant~~[or respondent]~~, unless further notice shall be ordered by the court. A notice of disclaimer of an appearance and waiver and an answer may be filed at any time prior to the hearing on the complaint or ~~[motion]~~ petition.

Rule 9. PLEADING SPECIAL MATTERS.

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) **Fraud, mistake, condition of the mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) **Conditions precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) **Official document or act.** In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matters showing jurisdiction to render it.

(f) **Time and place.** For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matters.

(g) **Reserved.**

Rule 10. ~~[FORM OF PLEADING]~~ MOTIONS.

~~[(a) **Caption; names of parties.** Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and the name, code number, office address and telephone number of the attorney for the party in whose behalf the paper is filed, or of the party if the party is appearing pro se. This paragraph shall not apply to forms provided by the court. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.~~

~~—[(b) **Paragraphs; separate statements.** All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.]~~

~~—[(c) **Adoption by reference; exhibits.** Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.]~~

(a) **Form of motions.** All motions, except when made during a hearing or trial, shall be in writing, shall state the grounds therefor, shall set forth the relief or order sought, and if involving a question of law shall be accompanied by a memorandum in support of the motion. Every motion, except one entitled to be heard ex parte, shall be accompanied by a notice of hearing or setting for hearing thereof. If a motion requires the consideration of facts not appearing of record, it shall be supported by affidavit or declaration. All written motions shall comply with the requirements of Rule 7.1 of these rules.

(b) **Declaration in lieu of affidavit.** In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

I, (name of person), do declare under penalty of law that the foregoing is true and correct.

Dated: _____

Signature _____

(c) **Motions requesting financial relief.** Any motion seeking an order for or modification of financial or monetary relief of any kind, except for an award of attorney's fees in enforcement proceedings, shall have attached, typewritten, unless otherwise permitted by the court for good cause shown, income and expense and asset and debt statements on the form provided by the court or equivalent

forms, executed by the movant and duly notarized or executed under penalty of perjury. Unless otherwise ordered, any person responding to such motion shall prepare and submit to the court and the movant, no later than 48 hours prior to the hearing of such motion, unless the date of the hearing is less than 5 working days after service of said motion on the respondent, income and expense and asset and debt statements on the form provided by the court or equivalent forms, executed by such respondent and duly notarized or executed under penalty of perjury. Where the time between service and the hearing date is less than 5 working days, such statements shall be submitted not later than immediately prior to the hearing.

(d) Response to motions; effect of failure to appear. In addition to the requirements of Rule 7.1 of these rules and subsection (c) of this rule, any person responding to a motion shall file and serve his or her written response pursuant to these rules, unless ordered otherwise by the court. A party who does not oppose or who intends to support a motion, or who desires a continuance, shall give written notification to the court and opposing counsel pursuant to these rules, unless ordered otherwise by the court. Failure to appear at the hearing may be deemed a waiver of objections to the granting of the motion.

(e) Appearance and waiver. Any respondent to any motion may execute a form of appearance and waiver of notice or further notice of hearing on the motion at any time after receiving a copy of the filed motion. The appearance and waiver of notice shall be filed within a reasonable time before the date of hearing on said motion. Upon the filing of an appearance and waiver, all averments in the motion shall be deemed admitted and the hearing on the motion shall proceed without further notice to the respondent, unless further notice shall be ordered by the court. A notice of disclaimer of an appearance and waiver of notice and an answer may be filed at any time prior to the hearing on the motion.

Rule 11. SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. The name of the person signing the document shall be typed or hand-printed in block letters directly below the signature. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit or declaration. The rule in equity that the averments of an answer under oath must be overcome by the testimony of 2 witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief ~~formed~~ after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Rule 12. DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON THE PLEADINGS.

(a) When presented. A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, except when service is made under Rule 4(e) of these rules and a different time is prescribed in an order of court under a statute or rule of court. A party served with

a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or

(2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) lack of jurisdiction over the subject matter,
- (2) lack of jurisdiction over the person,
- (3) improper venue,
- (4) insufficiency of process,
- (5) insufficiency of service of process,
- (6) failure to state a claim upon which relief can be granted, and
- (7) failure to join a party under Rule 19 of these rules.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 of these rules, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 of these rules, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56 of these rules.

(d) Preliminary hearings. The defenses specifically enumerated (1) - (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment [~~mentioned in~~ allowed by subdivision (c) of this rule shall be heard and determined before trial on application of any party unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order

stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses in motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) ~~hereof~~ of this rule on any of the grounds there stated.

(h) Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) of these rules to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19 of these rules, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a) of these rules, or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by motion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 13. COUNTERCLAIM AND CROSS-CLAIM.

(a) Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if

(1) at the time the action was commenced the claim was the subject of another pending action; or

(2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim against the state. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State or a county, or an officer or agency of the State or a county.

(e) Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-claim against co-party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the

original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20 of these rules.

(i) Separate trials; separate judgment. If the court orders separate trials as provided in Rule 42(b) of these rules, judgment on a counterclaim or cross-claim may be rendered when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14. THIRD-PARTY PRACTICE.

(a) When parties may bring in third-party. A party to the action may cause a third-party to be brought in only in the event that property rights of such third-party may be affected or such third-party has or may have an interest in the custody or visitation of a minor child of a party to the action. The party seeking to bring in a third-party defendant shall file a motion for leave to file a third-party complaint together with an affidavit or declaration and notice in accordance with Rule ~~[7(b)(1)]~~ 10 of these rules. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party complaint as provided in Rule 12 of these rules. The third-party defendant may also assert any claim against the plaintiff or defendant arising out of the transaction or occurrence that is the subject matter of the complaint.

(b) Reserved.

Rule 15. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) Amendments. 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. 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. Amendments to pleadings and documents shall state clearly what is being changed and, thereafter, what the change is. 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 to conform to the evidence. 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. If evidence is objected to at the trial on the ground that it is not within the issues made by the 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 ~~[sub]~~ served 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.

(c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment

(1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and

(2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party ~~plead~~respond to the supplemental pleading, it shall so order, specifying the time therefor.

**Rule 16. ~~[PRE-TRIAL PROCEDURE]~~ CONFERENCES WITH THE COURT;
FORMULATING ISSUES.**

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1) The settlement of the case;
- (2) The simplification of the issues;
- (3) The necessity or desirability of amendments to the pleadings;
- (4) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (5) The limitation of the number of expert witnesses;
- (6) The advisability of a preliminary reference of issues to a master for findings to be used as evidence;
- (7) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish a pre-trial calendar on which actions may be placed for consideration as above provided.

IV. PARTIES

Rule 17. PARTIES; CAPACITY.

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Reserved.

(c) Minors or incompetent persons. The court may appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incompetent person.

(d) Unidentified defendant.

(1) When it shall be necessary or proper to make a person a party defendant and the party desiring the inclusion of the person as a party defendant has been unable to ascertain the entire name of the defendant or a part of the defendant's name to ascertain the defendant's identity, the party desiring the

inclusion of the person as a party defendant shall in accordance with the criteria of Rule 11 of these rules set forth in a pleading the person's interest in the action, so much of the defendant's name as is known (and if unknown, a fictitious name shall be used), and shall set forth with specificity all actions already undertaken in a diligent and good-faith effort to ascertain the person's full name and identity.

(2) Subject to HRS section 657-22, the person intended shall thereupon be considered a party defendant to the action, as having notice of the institution of the action against that person, and as sufficiently described for all purposes, including services of process, and the action shall proceed against that person.

(3) Any party may, by motion for certification, make the name or identity of the party defendant known to the court within a reasonable time after the moving party knew or should have known the name or identity of the party defendant. The motion shall be supported by affidavit or declaration setting forth all facts substantiating the movant's claim that the naming or identification has been made with due diligence. When the naming or identification is made by a plaintiff, it shall be made prior to the filing of the [~~pre-trial~~] position statement by that plaintiff, or within such additional time as the court may allow. The court shall freely grant reasonable extensions of the time in which to name or identify the party defendant to any party exercising due diligence in attempting to ascertain the party defendant's name or identity.

(4) When a party defendant has been named or identified in accordance with this rule, the court shall so certify and may make any order that justice requires to protect any party from undue burden and expense in any further proceedings involving the party defendant.

(5) A party defendant who has been named or identified in accordance with this rule may have dismissal of one or more claims against the party defendant if the party defendant shows in a timely manner that the delay in naming or identifying the party defendant has caused the party defendant substantial prejudice and if the interests of justice so require.

Rule 18. RESERVED.

Rule 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION.

(a) **Persons to be joined if feasible.** A person who is subject to service of process shall be joined as a party in the action if

(1) in the person's absence complete relief cannot be accorded among those already parties, or

(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may

(A) as a practical matter impair or impede the person's ability to protect that interest. or

(B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) **Determination by court whenever joinder not feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Pleading reasons for nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons [as] described in subdivision (a)(1)-(2) [~~hereof~~] of this rule who are not joined, and the reasons why they are not joined.

(d) **Reserved.**

Rule 19A. REPEALED.

Rule 20. PERMISSIVE JOINDER OF PARTIES.

(a) **Permissive joinder.** All persons may join or be joined in one action as parties concerning any right to relief jointly, severally, or in the alternative, in respect of or arising out of property ownership or an issue as to paternity, custody, visitation, [~~or~~] support₂ [~~of a child~~] placement₂ or treatment of a child.

(b) **Separate trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claims against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. MISJOINDER AND NON-JOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately by order of the court.

Rule 22. RESERVED.

Rule 23. RESERVED.

Rule 24. INTERVENTION.

(a) **Intervention of right.** Upon timely application anyone shall be permitted to intervene in an action:

- (1) when a statute confers an unconditional right to intervene; or
- (2) when the applicant claims an interest relating to the property, transaction₂ or custody₂ [~~or~~] visitation, or parental rights of a minor child which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicants interest is adequately represented by existing parties.

(b) **Permissive intervention.** Upon timely application anyone may be permitted to intervene in an action:

- (1) when a statute confers a conditional right to intervene; or
- (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any statute, ordinance or executive order administered by an officer, agency or governmental organization of the State or a county, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute, ordinance or executive order, the officer, agency or governmental organization upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

(d) Notice of Claim of Unconstitutionality. A party who draws into question the constitutionality of a Hawai'i statute[;] in any proceeding to which the State of Hawai'i, or any agency thereof, or any officer or employee thereof in an official capacity is not a party, shall provide immediate written notice of the constitutional issue to the Attorney General of the State of Hawai'i.

Rule 25. SUBSTITUTION OF PARTIES.

(a) Death.

(1) If a party dies and the case is not thereby extinguished, the court may on motion order substitution of the proper parties where appropriate. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 of these rules and upon persons not parties in the manner provided in Rule 4 of these rules for the service of process. Unless the motion for substitution is made not later than 120 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) If a party to any action or motion relating to any action dies, and if it appears that the action is thereby extinguished, the surviving party shall suggest the death of the party and also move that the action is thereby extinguished and should be dismissed, and shall serve such suggestion and motion on all parties, including the personal representative of and the attorney of record for the deceased party, if any, and on any children of the deceased party, known to the suggesting party, in the manner provided for service in these rules. Unless objections are filed within 30 days after the last date of service of said suggestion and motion, an order dismissing the action without prejudice, to be prepared by the attorney for the surviving party, shall be entered. Where objections to the dismissal of such action are filed within said 30-day period or any extension granted by the court, the court shall hear said objections after notice to all persons who have appeared in the action[;] and the attorney of record for the deceased party, determine whether or not the case should be dismissed, and enter an appropriate order.

(3) If a petitioner in a pending adoption action dies, the court may enter an adoption decree upon motion of the surviving petitioner or the spouse of such deceased petitioner and if the court deems the adoption to be in the best interests of the child concerned.

(b) Incompetency. If a party becomes incompetent, the court upon motion served on the parties as provided in [subdivision (a) of this r] Rule 5 of these rules and upon persons not parties in the manner provided in Rule 4 of these rules for the service of process may allow the action to be continued by or against the representative of that party.

(c) and (d). Reserved.

V. DEPOSITIONS AND DISCOVERY

Rule 26. GENERAL PROVISIONS GOVERNING DISCOVERY.

(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things; [or] permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, or otherwise protected by law, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or

other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii) and Rule 45.1 of these rules [~~in regards to minor child~~].

(2) LIMITATIONS. By order, the court may alter the limits in these rules on the number of depositions [~~and interrogatories~~] or the length of depositions under Rule 30 and the number of interrogatories under Rule 33 of these rules. By order, the court may also limit the number of requests under Rule 36 of these rules. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c) of these rules.

(3) (RESERVED.)

(4) TRIAL PREPARATION: MATERIALS. A party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) of these rules apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) TRIAL PREPARATION: EXPERTS.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial.

(B) A party may, through interrogatories and/or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) of these rules or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and

(ii) with respect to discovery obtained under subdivision (b)(5)(B) of this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(6) **CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION MATERIALS.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) **Protective orders.** Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) of these rules apply to the award of expenses incurred in relation to the motion.

(d) **Sequence and timing of discovery.** Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) **Supplementation of responses.** A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

- (1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.
- (2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that (A) the response is in some material respect incomplete or incorrect or (B) the response omits information which if disclosed could lead to the discovery of additional admissible evidence.
- (3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery; and
- (5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served no later than 10 days after service of the motion.

Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the court or by the attorney for any party. Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a ~~[pre-trial]~~ conference authorized by Rule 16 of these rules.

(g) Signing of discovery requests, responses, and objections.

(1) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by ~~[at least one]~~ an attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

- (A) Consistent with these rules and warranted by existing law or good faith argument for the extension, modification, or reversal of existing law;
- (B) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
- (C) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

COMMENT:

The 2006 amendments to Rules 26 and 28 to 37 of the Hawai'i Family Court Rules track most of the 2004 amendments to their counterparts in the Hawai'i Rules of Civil Procedure. Rule 27 of the Hawai'i Family Court Rules was not amended because its Hawai'i Rules of Civil Procedure counterpart is broader than necessary for Family

Court and the current Rule 27 of the Family Court Rules already contains gender neutral language.

In proposing the amendments to Rule 26(b)(1) of the Hawai'i Family Court Rules, the limitations of Rule 45.1 of the Hawai'i Family Court Rules, regarding child witnesses, were applied to the general language of the corresponding language in Rule 26(b)(1) of the Hawai'i Rules of Civil Procedure.

Rule 26(b)(3) of the Hawai'i Rules of Civil Procedure, regarding insurance agreements, was not adopted because it is not applicable to Family Court. Subsection 26(b)(3) is reserved to allow for future amendments and to match the numbering of the Hawai'i Rules of Civil Procedure.

Rule 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.

(a) Before action.

(1) PETITION. A person who desires to perpetuate ~~[the person's own]~~ testimony ~~[or that of another person]~~ may file a verified petition in the family court in the circuit of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (A) that the petitioner expects to be a party to an action cognizable in a family court of this State but is presently unable to bring it or cause it to be brought, (B) the subject matter of the expected action and the petitioner's interest therein, (C) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (D) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (E) the names and addresses of the persons to be examined and the substance of the testimony the petitioner expects to elicit from each. The petition shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined and named in the petition, for the purpose of perpetuating their testimony.

(2) NOTICE AND SERVICE. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. Unless otherwise ordered by the court, at least 20 days before the date of hearing the notice shall be served either within or without the State in the manner provided in Rule 4(d) of these rules for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d) of these rules, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17(c) of these rules apply.

(3) ORDER AND EXAMINATION. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions ~~[may]~~ shall then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35 of these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) USE OF DEPOSITION. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the United States or of the state, territory or insular possession of the United States in which it is taken, it may be used in any action involving the same subject matter subsequently brought in accordance with the provisions of Rule 32(a) of these rules.

(b) Pending appeal. If an appeal has been taken from a judgment of a family court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered

may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show

- (1) the names and addresses of the persons to be examined and the substance of the testimony the party expects to elicit from each, and
- (2) the reasons for perpetuating their testimony.

If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35 of these Rules, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(c) Perpetuation by action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

Rule 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of this State or of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in Rules 30, 31, and 32 of these rules includes a person appointed by the court or designated by the parties under Rule 29 of these rules.

- (b) In foreign countries.** Depositions may be taken in a foreign country
- (1) pursuant to any applicable treaty or convention, or
 - (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or
 - (3) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or
 - (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony.

A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE.

Unless otherwise directed by the court or clerk as provided in Rule 77(c)(2) of these rules, the parties may by written stipulation

- (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and

(2) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34 and 36 of these rules for responses to discovery may~~[-]~~ be made only with the approval of the court if they would interfere with any time set for completion of discovery, ~~[for] a hearing of a motion, or [for] a trial~~~~[-, be made only with the approval of the court]~~.

Rule 30. DEPOSITIONS UPON ORAL EXAMINATION.

(a) When depositions may be taken; when leave required.

(1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only (A) if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e) of these rules, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) if special notice is given as provided in subdivision (a)(2)(c) of this rule, or (B) as provided in paragraph (2). The attendance of nonparty witnesses may be compelled by subpoena as provided in Rule 45 of these rules.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2) of these rules, if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 of these rules by the plaintiffs, or by the defendants, or by third-party defendants;

(B) The person to be examined already has been deposed in the case; or

(C) A plaintiff seeks to take a deposition before the expiration of the 30 day period specified in Rule 30(a)(1)(A) of these rules unless the notice contains a certification, with supporting facts, that the person to be examined is about to leave the State or the United States, or is bound on a voyage to sea, and will be unavailable for examination unless deposed before that time.

(b) Notice of examination: General requirements; method of recording; production of documents and things; deposition of organization; deposition by telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall be filed and shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 of these rules and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than

stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 of these rules for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matter on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1) of these rules, a deposition taken by such means is taken in the circuit and at the place where the deponent is to answer questions.

(8) The notice shall inform the deponent[;] of the requirements of subsection (e) of this rule in substantially the following form:

You are hereby notified that you may request a review of the completed transcript or recording of your deposition. You must make this request before the completion of your deposition. If you make such a request, after being notified by the court reporter or other officer taking the deposition that the transcript or recording is available, you will have 30 days to: (1) review the transcript or recording; and (2) if there are changes in form or substance, to sign a statement reciting such changes and the reasons for making them.

Failure to substantially comply with this notice requirement prior to the completion of the deposition shall preclude the use of the transcript or recording until the deponent has been provided 30 days within which to review the transcript or recording, and, if there are changes, to sign a statement reciting them and the reasons therefor. Any changes shall be appended to the transcript or recording.

(c) Examination and cross-examination; record of examination; oath; objections.

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Hawai'i Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness ~~on~~ under oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and duration; motion to terminate or limit examination.

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under R[r]ule 30(d)(4) of these rules.

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistently with Rule 26(b)(2) of these rules if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the circuit where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c) of these rules. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) of these rules apply to the award of expenses incurred in relation to the motion.

(e) Review by witness; changes; signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and delivery by officer; exhibits; copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Unless the court orders otherwise, depositions may be destroyed 6 months after the final disposition of the action, including appeal.

Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition

taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

COMMENT:

Because the newly revised Rule 30(e) of the Hawai'i Family Court Rules shifts the burden on the deponent to request a review of the transcript or recording as well as the burden to prepare a signed statement of changes within 30 days, Rule 30(b)(8), a new section, was drafted to require notice of these provisions in the written Notice of Examination.

Rule 31. DEPOSITIONS UPON WRITTEN QUESTIONS.

(a) Serving questions; notice.

(1) After commencement of the action, a party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45 of these rules.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2) of these rules, if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 of these rules by the plaintiffs, or by the defendants, or by third-party defendants; or

(B) The person to be examined has already been deposed in the case.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6) of these rules.

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f) of these rules, to

take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) **Notice of filing.** When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Rule 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS.

(a) **Use of depositions.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the ~~[rules of evidence]~~ Hawai'i Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the ~~[rules of evidence]~~ Hawai'i Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) of these rules to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness resides on an island other than that of the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(c) of these rules shall not be used against a party who demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition; nor shall a deposition be used against a party who, having received less ~~[that]~~ than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) of these rules requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 of these rules does not affect the right to use depositions previously taken[;] and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the ~~[rules of evidence]~~ Hawai'i Rules of Evidence.

(b) **Pretrial disclosures.** A party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment; the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony. Unless otherwise directed by the court, this information must be disclosed at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve

and promptly file a list [of] disclosing (i) any objections to the use under Rule 32(a) of these rules of a deposition designated by another party, and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of that testimony. Objections not so disclosed, other than objections under Rules 402 and 403 of the Hawai'i Rules of Evidence, are waived unless excused by the court for good cause. These disclosures must be made in writing, signed, and served.

(c) Objections to admissibility. Subject to the provisions of Rule 28(b) of these rules and subdivision (e) (3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(d) Form of presentation. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered.

(e) Effect of errors and irregularities in depositions.

(1) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) AS TO TAKING OF DEPOSITION.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind that might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 of these rules are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 of these rules are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Rule 33. INTERROGATORIES TO PARTIES.

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 60 in number, counting any subparts or subquestions as individual questions, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2) of these rules.

(b) Answers and objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29 of these rules.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) of these rules with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; use at trial. Interrogatories may relate to any matters that can be inquired into under Rule 26(b)(1) of these rules, and the answers may be used to the extent permitted by the ~~[rules of evidence]~~ Hawai'i Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of Rule 26(b) of these rules and that are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b) of these rules.

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth, either by individual item or by category, the items to be inspected and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons

and complaint upon that defendant. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29 or 77(c)(2) of these rules. The response shall set forth, either by individual item or by category, the items to be produced and describe each with reasonable particularity. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) of these rules with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons not parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45 of these rules.

Rule 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

(a) Order for examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made ~~[only]~~ upon the agreement of the parties or on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the [time, place, manner, conditions, and] scope of the examination and the person or persons by whom it is to be made.

(b) Report of examiner.

(1) ~~[If requested by the party against whom an order is made under Rule 35(a) or the person examined,]~~ All parties shall receive a copy of the [party causing the examination to be made shall deliver to the requesting party a copy of a detailed] written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition~~[- After delivery, the party causing the examination]~~ unless the court orders otherwise upon a showing of good cause by the party requesting that the report be withheld. All parties shall also be entitled upon request to receive from [the party against whom the order is made] a like report of any examination of the same party or person, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order ~~[against a party]~~ requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party ~~[in]~~ with respect ~~[of]~~ to the same mental or physical condition.

(3) This subdivision ~~[applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision]~~ does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

Rule 36. REQUESTS FOR ADMISSION.

(a) Request for admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) of these rules set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. ~~[The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.]~~

Each matter of which an admission is requested shall be separately set forth~~[- The matter is admitted unless]~~, and shall provide reasonably sufficient space for the answer after the question or demand. Two sets of the request for admission shall be served on the adverse party. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

(b) Responses.

(1) The response that includes the written answers and/or objections shall be served on the requesting party within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29 of these rules.~~[, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but,]~~ However, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant.

(2) The matter of which an admission is sought is admitted unless, the party to whom the request is directed timely serves upon the party requesting the admission a written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c) of these rules, deny the matter or set forth reasons why the party cannot admit or deny it.

(3) Each answer or objection shall be set forth immediately following the question or demand to which the response is being made. The response that includes the written answers and/or objections shall be signed by the party or by the party's attorney.

(c) Objections to the response. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) of these rules apply to the award of expenses incurred in relation to the motion.

~~[(b)]~~ **(d) Effect of admission.** Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 of these rules governing amendment of a ~~[pre-trial]~~ conference order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be ~~[sub]~~ served thereby

and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining ~~[the]~~ his or her action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

Rule 37. FAILURE TO MAKE OR COOPERATE IN DISCOVERY; SANCTIONS.

(a) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the circuit where the deposition is being taken. An application for an order to a person who is not a party shall be made to the court in the circuit where the deposition is being, or is to be, taken.

(2) MOTION. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31 of these rules, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a) of these rules, or a party fails to answer an interrogatory submitted under Rule 33 of these rules if a party, in response to a request for inspection submitted under Rule 34 of these rules, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) EVASIVE OR INCOMPLETE ANSWER OR RESPONSE. For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) EXPENSES AND SANCTIONS.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) of these rules and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) of these rules and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) SANCTIONS BY COURT IN CIRCUIT WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the circuit in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) of these rules to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under

subdivision (a) of this rule or Rule 35 of these rules, or if a party fails to obey an order entered under Rule 26(f) of these rules, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) of these rules requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to disclose; false or misleading disclosure; refusal to admit.

(1) A party that without substantial justification fails to amend a prior response to discovery as required by Rule 26(e)(2) of these rules, is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) of these rules.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36 of these rules, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the ~~[party the]~~ reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a) of these rules, or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) of these rules to testify on behalf of a party fails

(1) to appear before the officer who is to take the deposition, after being served with a proper notice, or

(2) to serve answers or objections to interrogatories submitted under Rule 33 of these rules, after proper service of the interrogatories, or

(3) to serve a written response to a request for inspection submitted under Rule 34 of these rules, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule.

Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c) of these rules.

(e) **Expenses against the State.** Except to the extent permitted by statute, expenses and fees may not be awarded against the State or a county under this rule.

VI. TRIALS

Rule 38. RESERVED.

Rule 39. RESERVED.

Rule 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCE OF TRIAL.

(a) **Assignment of case for trial.** The family courts shall provide by order for the placing of actions upon the trial calendar

- (1) without request of the parties, or
- (2) upon request of a party and notice to the other parties, or
- (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by statute.

(b) **Motions for continuance.** If a date has been assigned for trial of an action, a motion for continuance of the trial shall include on the first page of the notice of motion the trial date assigned and any previously assigned trial dates.

(c) **Consent of party to continuance of trial.** A motion for continuance of any assigned trial date, whether or not stipulated to by respective counsel, shall be granted only upon a showing of good cause, which shall include a showing that the client-party has consented to the continuance. Consent may be demonstrated by the client-party's signature on a motion for continuance or by the personal appearance in court of the client-party. However, consent is not required if the client-party is a government agency.

Rule 41. DISMISSAL OF ACTIONS.

(a) **Voluntary dismissal: Effect thereof.**

(1) BY NOTICE OF DISMISSAL; BY STIPULATION. Subject to the provisions of Rule 66 of these rules, and of any statute, an action may be dismissed by notice of dismissal or by stipulation as set out respectively in paragraphs (a)(1)(A) and (a)(1)(B) of this rule. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice. The notice of dismissal or stipulation shall state the Hawai'i Family Court ~~[rule number]~~ Rule and subsections pursuant to which the dismissal is filed.

(A) The initiating party, without approval of the court, may file a notice of dismissal at any time prior to service of process, unless an adverse party has already filed a document or appeared in court. Although approval of the court is not necessary for a dismissal under this paragraph (a)(1)(A), any such dismissal shall first be submitted for processing to the family court and shall not be effective until filed by the clerk of court.

(B) After the service of process, or if an adverse party has already filed a document or appeared in court prior to the service of process, a stipulation of dismissal may be submitted to the court. The stipulation shall be signed by all parties unless the signature of a party is waived by the court. The stipulation shall be effective only if approved by the court.

(2) BY ORDER OF COURT ON INITIATING PARTY'S MOTION TO DISMISS. Except as provided in paragraphs (a)(1)(A) and (a)(1)(B) of this rule, an action shall not be dismissed at the instance of the initiating party save upon order of the court after notice and hearing on a motion to dismiss. The dismissal shall include such terms and conditions as the court deems proper. If a cross-action has been pleaded by an adverse party prior to the service upon the adverse party of the motion to dismiss, the action shall not be dismissed against the objection of the adverse party unless the cross-action can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) **Involuntary dismissal: Effect thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the claimant has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff or may decline to render any decree until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.

(c) **Dismissal of cross-action.** The provisions of this rule apply to the dismissal of any cross-action. 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.

(d) **Reserved.**

(e) **Dismissal for want of service or prosecution [~~or service~~].**

(1) A diligent effort to effect service shall be made in all actions[;] and if no service be made within 6 months after an action or post-~~decree~~ judgment motion has been filed then, after notice of not less than 10 days to the filing party at the last known address, the same may be dismissed. Such a dismissal may be set aside and the action reinstated by order of court for good cause shown on ex parte motion duly filed in said action within 30 days after mailing of the order of dismissal and notice to the last known address of the parties or parties' counsel.

(2) In any case in which a final decree or order has not been made and filed prior to the expiration of 1 year from the date of the filing of the complaint or post-decree motion in said action, the same may be dismissed unless a trial date has been set or an order filed enlarging time upon motion and good cause shown. Such a dismissal may be set aside and the action or motion reinstated by order of court for good cause shown on ex parte motion duly filed in said action within 30 days after mailing of the order of dismissal and notice to the last known address of the parties or parties' counsel.

(3) [~~Deleted~~]Reserved.

(4) An order of any dismissal and notice pursuant to subsections (e)(1) or (2) shall be filed in the record of the case.

Rule 42. CONSOLIDATION; SEPARATE TRIALS.

(a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a [~~joint~~] consolidated hearing or trial of any or all the matters in issue in the

actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) **Separate trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 43. TAKING OF TESTIMONY.

(a) **Form.** In all ~~[matters]~~ trials, the testimony of witnesses shall be taken orally in open court, unless otherwise allowed by law or ~~[rule of]~~ court order.

(b) **Presentation of expert testimony.** The court may schedule the presentation of all expert testimony during the same phase of the trial.

(c) **Record of the excluded evidence.** If an objection to a question propounded to a witness is sustained by court, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness, unless it clearly appears that the evidence is not admissible on any grounds or that the witness is privileged.

(d) **Affirmation in lieu of oath.** Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) **Evidence on motions.** When a motion is based on facts not appearing of record, the court may hear the matter on affidavits or declarations presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(f) **Interpreters.** The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

Rule 43.1. RECORDING OF TESTIMONY AND PROCEEDINGS.

The court shall order that the testimony and other matters required to be preserved by a reporter shall be preserved by audio or video recording or by such other method as may be appropriate. It is the responsibility of the court to see to it that the record so made is sufficiently clear to permit full transcription and truly discloses what occurred in the court with such references to the record made as will enable the record to be reviewed and transcribed as occasion arises.

Rule 44. PROOF OF OFFICIAL RECORD.

(a) Authentication.

(1) DOMESTIC. An official record kept within the United States, or any state, district, commonwealth, or within a territory~~[, or insular possession thereof, or within]~~ subject to the ~~[Panama Canal Zone, or the Trust Territory of the Pacific Islands, or]~~ administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the ~~[officer's]~~ deputy, and accompanied by a certificate that ~~[such]~~ the officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) FOREIGN. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person, or (B) of any foreign official whose certificate of genuineness

of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position [~~relating~~] relates to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (A) admit an attested copy without final certification or (B) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44.1. DETERMINATION OF FOREIGN LAW.

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Hawai'i Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

Rule 45. SUBPOENA.

(a) For attendance of witnesses; form; issuance. Every subpoena shall be issued by the clerk of the circuit court of the circuit in which the action is pending under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise blank, to a party requesting it, who shall fill it in before service.

(b) For production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may

(1) quash or modify the subpoena if it is unreasonable and oppressive, or
(2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service and notice. A subpoena may be served at any place within the State. A subpoena may be served:

(1) anywhere in the State by the sheriff or the sheriff's deputy or by any other person who is not a party and is not less than 18 years of age; or
(2) in any county by the chief of police of that county or a duly authorized subordinate.

Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the State or a county, or an officer or agency of the State or a county, fees and mileage need not be tendered. Notice of the issuance and service of a subpoena shall be served on all parties to the action.

(d) Subpoena for taking depositions; place of examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) of these rules constitutes a sufficient authorization for the issuance by the clerk of the circuit court of the circuit in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b) of these rules, but in that event the subpoena will be subject to the provisions of Rule 26(c) of these rules and subdivision (b) of this Rule 45.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the State may be required to attend an examination only in the county wherein that person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the State subpoenaed within the State may be required to attend only in the county wherein that person is served with a subpoena, or at such other convenient place as is fixed by an order of court.

(e) ~~[Reserved.] Duties in responding to subpoena.~~

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

Rule 45.1. TESTIMONY OF MINOR CHILD.

Prior approval must be obtained from the court before any child is summoned to appear as a witness so that the court may determine whether to allow the testimony of the child and the form and manner in which the child's testimony will be permitted. The court may appoint a guardian ad litem as provided by law and Rule 17(c) of these rules before allowing such testimony.

Rule 46. EXCEPTIONS UNNECESSARY.

Formal exceptions to rulings or orders of court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action that the party desires the court to take or the party's objection to the action of the court and ~~the~~ grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47. RESERVED.

Rule 48. RESERVED.

Rule 49. RESERVED.

Rule 50. RESERVED.

Rule 51. RESERVED.

Rule 52. FINDINGS BY THE COURT.

(a) **Effect.** In all actions tried in the family court, the court may find the facts and state its conclusions of law thereon or may announce or write and file its decision and direct the entry of the appropriate judgment; except upon notice of appeal filed with the court, the court shall enter its findings of fact and conclusions of law where none have been entered, unless the written decision of the court contains findings of fact and conclusions of law. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law, where the written decision of the court does not contain the findings of fact and conclusions of law, within 10 days after the filing of the notice of appeal, unless such time is extended by the court. Requests for findings are not necessary for purposes of review. ~~[Findings of fact if entered shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.]~~ The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If a decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein.

(b) **Amendment.** Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59 of these rules. When findings of fact are made by the court, the question of sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the family court an objection to such findings or has made a motion to amend them or a motion for judgment.

~~[(c) **Submission of draft of a decision.** At the conclusion of a hearing or trial, or at such later date as matters taken under advisement have been decided, the judge for convenience may designate the attorney for one of the parties to prepare and submit a draft of a decision, containing such provisions as shall have been informally outlined to such attorney by the judge. The attorney requested to prepare the proposed decision shall, within 10 days, unless such time is extended by the court, deliver a draft of the decision to the division clerk. Upon review and finalization of form by the judge, the decision shall be entered.]~~

Rule 53. MASTERS.

(a) **Appointment [and compensation].** The court ~~[in which any action is pending]~~ may appoint a ~~[special]~~ master ~~[therein. As used in these rules the word "master" includes a]~~, referee, ~~[an]~~ auditor, ~~[an]~~ examiner, ~~[and an]~~ assessor~~[-The compensation]~~, special master, volunteer settlement master, commissioner, or receiver ("a master") to ~~[be allowed]~~ perform specific acts and/or obtain specific evidence to [a master] assist the court.

(b) **Compensation.** A master (except a volunteer settlement master) shall be ~~[fixed]~~ compensated as determined by the court, and shall be paid out of any fund or subject matter of the action, which [that] is in the custody and control of the court, or by one or more of the parties themselves, as the court may direct. The master shall not retain his or her report as security for compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

~~[(b)](c)~~ **Reference.** A reference to a master shall be ~~[the exception and not the rule. A reference shall be made only upon a showing that some exceptional condition requires it.]~~ made for good cause. A party may move for the appointment of a master. The court may appoint a master on its own initiative after affording the parties an opportunity to be heard.

~~[(e)](d)~~ **Powers.** The order of reference to the master ~~[may]~~ shall specify ~~[or limit]~~ the master's powers and duties. It may direct the master to ~~[report only upon]~~ perform particular ~~[issues or to do or perform]~~ acts only, or to obtain particular ~~[acts or to receive and report]~~ evidence only ~~[and may fix the time and place for filing of the master's report]~~.

(e) Report. The order of reference to a master shall specify the date by which the master's report shall be completed, served on all parties, and filed with the court.

(f) Admission. The written report of a master may be received in evidence if no objection is made; or if objection is made, may be received in evidence provided the person or persons responsible for the report are available for cross-examination as to any matter contained therein. When a report is received in evidence, any party may introduce other evidence supplementing, supporting, modifying, or rebutting the whole or any part of the report.

(g) Dismissal of action. An action wherein a master has been appointed shall not be dismissed except by order of the court.

Rule 53.1. ALTERNATIVE DISPUTE RESOLUTION.

(a) Authority to order. The court, ~~[in its discretion]~~ sua sponte or upon motion by a party, may, in exercise of its discretion, order the parties to participate in ~~[an alternative dispute resolution]~~ a nonbinding Alternative Dispute Resolution process (ADR or ADR process) subject to terms and conditions imposed by the court. ADR includes mediation or other such process the court determines may be helpful in encouraging an economic and fair resolution of all or any part of the disputes presented in the matter. Subsections (b) through (d) do not apply to ADR administered by the Hawai'i Judiciary, such as the Volunteer Settlement Master Program.

(b) Factors to consider; fees and expenses.

(1) Before ordering a case to ADR, the court may consider factors, including, but not limited to, the current status of the case, whether the parties would be better served by a settlement conference held by the court, whether the parties are willing to participate in ADR, and whether the parties have previously participated in ADR in the pending matter. In addition, the court may consider whether ordering a case into ADR would result in an unfair or unreasonable economic burden on any party.

(2) All ADR fees and expenses of the neutral shall be borne equally by the parties unless otherwise agreed to by the parties, ordered by the court, or provided by law.

(c) Selection of the neutral. If the ADR process ordered by the court involves the selection of a neutral, the parties shall first attempt to select a neutral by mutual agreement. If the parties cannot agree, then each party shall submit a list to the court nominating up to 3 prospective neutrals by a date determined by the court. The court shall then decide which person shall serve as the neutral. If at any time the neutral becomes unable or unwilling to serve, and the parties are unable to agree on the selection of another neutral, the court shall select another neutral from the names previously provided by the parties.

(d) Disclosure. Unless waived by all parties, the parties, counsel, and neutral shall disclose to each other the identity of other participants who may be included in the ADR process. In addition, the neutral shall disclose any other facts and information, including relationships, that a reasonable person would consider likely to affect the impartiality of the neutral, including the neutral's relationships with counsel. The parties, counsel, and neutral shall have a continuing obligation to disclose any information they subsequently learn during the ADR process that a reasonable person would consider likely to affect the impartiality of the neutral.

(e) Physical presence of counsel and parties required. Lead trial counsel and parties shall attend, in person, all ADR conferences scheduled by the neutral unless excused by the neutral.

(f) Communication by parties, counsel, neutral and the Court. Unless the parties otherwise agree in writing, the neutral, counsel, the parties, and other participants in any ADR process shall not communicate with the court adjudicating the merits of the matter about the substance of any position, offer or other matter related to the ADR process, nor shall a court request or order disclosure of such information unless such disclosure is required to enforce a settlement agreement, adjudicate a dispute over the neutral's fees, or provide evidence in any attorney disciplinary proceeding, and then only to the extent required to accomplish such purpose. However, the neutral may disclose to a court whether the ADR process is scheduled, pending, or concluded; who attended; and, if applicable, whether a settlement or resolution was reached with regard to some or all issues presented.

VII. JUDGMENT

Rule 54. JUDGMENT; COSTS.

(a) Definition; form.

"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Reserved.

(c) Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount [from] that which was prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs. Costs shall be allowed where expressly provided by statute, stipulation, agreement, order, or these rules.

(e) Effective date. All judgments and orders shall take effect upon the signing and filing thereof unless otherwise ordered.

Rule 54.1. PERIODIC PAYMENTS.

Provisions for periodic payments of alimony and/or child support shall be set forth specifically in the judgment or order providing for the same to be paid. Provisions for alimony shall state whether such payments are to be made directly to the recipient or through the chief clerk of a circuit court, or through the Child Support Enforcement Agency when there is a concurrent child support order. A provision for child support shall state that it is payable through the Child Support Enforcement Agency and pursuant to an order for income assignment, except that provisions for direct payment of child support may be made pursuant to HRS section 576D-10. All orders for periodic payment shall state the commencement date, and the date or dates of each month and year on which such payments are to be made. Provisions for periodic payments of alimony for an indefinite period may be approved but shall be made subject to further order of the court. Provisions for periodic payments of alimony for a definite period may be approved but shall be for a definite period of time or until further order of the court, whichever occurs sooner.

COMMENT:

This rule sets forth the requirements in child support orders. At the time it was promulgated, the statute required that all such orders be paid through the Child Support Enforcement Agency. Subsequently, Haw. Rev. Stat. § 576D-10(b) through (i) was amended to allow direct payments subject to certain conditions. This rule was amended to be consistent with statutory amendments.

Rule 54.2. MODIFICATION OF JUDGMENTS.

(a) **Custody and visitation.** A proposed stipulation seeking to establish or amend provisions in a judgment or any order relating to custody or visitation of minor children will not be approved unless there is a showing that the proposal is in the best interests of the children. Unless waived by the court, such stipulation shall be signed by both parties.

(b) **~~[Terminating]~~ Modifying or terminating support for adult children.**

(1) In an action where a party seeks to modify or terminate existing orders relating to the support, maintenance and education of minor children upon a child reaching the age of majority, service of the motion or pleading seeking such relief shall be made on the adult child in addition to the adverse party in the manner provided in these rules.

(2) A proposed stipulation seeking to modify existing orders relating to the support, maintenance and education of minor children by reducing or terminating provisions for child support upon a child attaining the age of majority shall not be approved unless the adult child affected by the proposed change shall have approved the stipulation in addition to the parties; or an affidavit or declaration is provided by either party that the child is no longer dependent for education and the child's whereabouts are unknown; or a hearing is held.

Rule 55. DEFAULT.

(a) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by motion supported by affidavit or declaration or as otherwise provided hereinbelow, the court shall enter the party's default.

(b) **Judgment.** In a contested or uncontested action, where it appears from the record and by testimony (or by affidavit or declaration in an uncontested matrimonial action) that the adverse party has been duly served with the complaint or dispositive motion, and the adverse party has failed to appear or otherwise defend as provided by these rules, the court may grant ~~[a]~~ an entry of default and proceed with a proof hearing, when a hearing is required, and enter a default judgment. No judgment by default shall be entered against a minor or incompetent person unless represented in the action by a guardian, or other such representative who has appeared therein, and upon whom service may be made under Rule 17(c) of these rules.

(c) **Setting aside default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b) of these rules.

(d) **Plaintiff, cross-plaintiff.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff or a party who has pleaded a cross-complaint. In all cases a judgment by default is subject to the limitations of Rule 54(c) of these rules.

(e) **Judgment against the State, etc.** No judgment by default shall be entered against the State or a county, or an officer or agency of the State or a county, unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

Rule 56. SUMMARY JUDGMENT.

(a) **For claimant.** A party seeking to recover upon a claim, counterclaim, or cross-claim may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits or declarations for a summary judgment in the party's favor upon all or any part thereof.

(b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, move with or without supporting affidavits or declarations for a summary judgment in the party's favor as to all or any part thereof.

(c) **Motion and proceedings thereon.** The motion shall be filed and served not less than 18 days before the date set for the hearing. The adverse party may file and serve opposing memorandum

and/or affidavits or declarations not less than 8 days before the date set for the hearing. The moving party may file and serve a reply or affidavit or declaration not less than 3 days before the date set for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits or declarations, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits or declarations; further testimony; defense required. Supporting and opposing affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit or declaration shall be attached thereto or served therewith. The court may permit affidavits or declarations to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits or declarations. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or declarations or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits or declarations are unavailable. Should it appear from the affidavits or declarations of a party opposing the motion that the party cannot for reasons stated present by affidavit or declaration facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits or declarations to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits or declarations made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits or declarations presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits or declarations caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Form of order. Whenever the court on a motion for summary judgment disposes of one or more but fewer than all claims, involving one or more parties, the order entered must specifically set forth the claim or claims disposed of, and with respect to each such claim, the party or parties in whose favor the disposition is made and the party or parties against whom the disposition is made.

Rule 57. RESERVED.

Rule 58. PREPARATION AND SIGNING OF JUDGMENTS AND OTHER ORDERS.

(a) Preparation of judgments and other orders. Within 10 days, or within such time directed by the court, after entry or announcement of the decision of the court, the [prevailing] party~~[-unless otherwise ordered]~~ identified by the court[-] shall prepare a judgment, decree, or order in accordance with the decision and attempt to secure thereon the approval [as to form] of the opposing counsel or party (if pro se) [~~and deliver to the court the original and necessary copies, or if not so approved, serve a copy~~]

thereof upon each party who has appeared in the action and deliver the original and copies to the court. Any party objecting to a proposed judgment or order shall, within 5 days after receipt, serve upon all parties and deliver to the court that party's proposed judgment or order, and in such event, the court shall proceed to settle the judgment or order] as to form.

~~[(b) —~~ **Signing of judgment or order.** Upon a showing in writing that opposing counsel or a party in a contested case fails or refuses to approve a judgment or order submitted to that opposing counsel or party by the other counsel in accordance with the above, the court shall sign the judgment or order notwithstanding the absence of approval of the opposing counsel or party, provided that the submitted judgment or order conforms with the decision of the court.]

(b) Party approval or objection to form; delivery to Court. If there is no objection to the form of the proposed judgment, decree or order, the opposing counsel or party (if pro se) shall promptly approve as to form. If a proposed judgment, decree or order is not approved as to form by the parties within 5 days after a written request for approval, the drafting party shall file and serve the proposed order 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 the form of a proposed judgment, decree or order, that party shall within 5 days after service of the proposed judgment, decree or order, file and serve upon each party who has appeared in the action and deliver to the court:

- (1) a statement of objections and the reasons therefor; and
- (2) the form of the objecting party's proposed judgment, decree or order.

In such event, the court may schedule a Rule 58 conference or shall proceed to settle the judgment, decree or order. Either party may request a Rule 58 conference. Failure to file and serve objections and a proposed judgment, decree, or order within the time frame required shall constitute approval as to form of the drafting party's proposed judgment, decree or order.

(c) Court approval; sanctions. If a proposed judgment, decree or order is consistent with the decision of the court, the court shall cause the judgment, decree or order to be entered forthwith. If a proposed judgment, decree or order is not consistent with the decision of the court, the court may require submission of a conforming judgment, decree or order. The court may impose a monetary sanction against a party who submits a defective or untimely judgment, decree or order.

(d) Request for entry. If the drafting party fails to timely submit a proposed judgment, decree or order to the court, any other party may present a proposed judgment, decree or order to the Court for approval and entry.

(e) No waiver of right to appeal. Approval as to form shall not affect the right, or constitute waiver of the right, of any party to appeal from any judgment, decree or order issued.

~~[(e)]~~**(f) Documents submitted for court's signature pursuant to formal hearing.** All documents submitted for the court's signature that are pursuant to formal hearing, shall reflect the exact hearing date or dates and the name of the hearing judge under the case number and character of the document and shall comply with ~~[the Rules of the Circuit Courts]~~ Hawai'i Family Court Rule 7.1(c).

~~[(f)]~~**(g) Preparation of stipulated order when provisions on record.** If a party or parties are present in court, with or without an attorney, and state for the record that the parties stipulate to the entry of orders, the stipulation shall be reduced to writing by the attorney or party designated by the court, within 10 days, and shall be approved by all parties and their attorneys, if any, unless such a requirement is waived by the court. If a party who was present in court[-] fails or refuses to approve the stipulation and order within 5 days after receipt, the court may approve the stipulation and order without approval of either the party or the party's attorney, if any, provided that the provisions are consistent with the provisions stipulated to in court, and provided that the attorney or party preparing the stipulation and order informs the court in writing that either the party or the party's attorney, if any, refused or failed to approve the stipulation and order within the 5-day period.

Rule 58.1. STIPULATIONS AND ORDERS.

(a) Forms of stipulations and orders. A stipulation not made in open court shall be in writing, signed by the parties and/or their attorneys, and submitted to the court for approval. The stipulation shall cite the authority and state the reason(s) and factual or other basis for the stipulation therein. A stipulation shall have the effect of an order if the words "Approved and so ordered" or their equivalent appear on the stipulation, the stipulation is signed by the judge, and the stipulation is filed by the court.

(b) Stipulations extending or enlarging time. A stipulation for court approval to act under Rule 6(b)(1), Hawai'i Family Court Rules, shall include the following:

- (1)** the title of the document and the sequential number of such extension or enlargement;
- (2)** the reason(s) for the extension or enlargement; and
- (3)** the expiration date of the originally prescribed period or as extended or enlarged by a previous order.

Rule 59. NEW TRIALS; RECONSIDERATION OR AMENDMENT OF JUDGMENTS AND ORDERS.

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for good cause shown. On a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for motion. A motion for a new trial shall be filed not later than 10 days after the entry of the judgment unless otherwise provided by statute.

(c) Time for serving affidavits or declaration. When a motion for new trial is based on affidavits or declarations, they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits or declarations, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits or declarations.

(d) On initiative of court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial, for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to reconsider, alter or amend a judgment or order. Except as otherwise provided by HRS section 571-54 regarding motions for reconsideration in proceedings based upon HRS sections 571-11(1), (2), or (6), a motion to reconsider, alter or amend a judgment or order is not required but may be filed no later than 10 days after entry of the judgment or order and shall be a non-hearing motion, except that the court in its discretion may set any matter for hearing. Responsive pleadings to a motion for reconsideration shall be filed no later than 10 days after [filing] service of the motion to reconsider, alter or amend the judgment or order.

(f) Entry of judgment. Unless otherwise ordered by the court, the filing of the judgment in the office of the clerk constitutes the entry of the judgment, and the judgment is not effective before such entry.

COMMENT:

Rule 59(e) of the Hawai'i Family Court Rules sets forth the requirements for motions to reconsider, alter or amend a judgment or order. At the time this rule was originally promulgated, the statute required that a motion for reconsideration be filed prior to taking an appeal in a Chapter 587 case. Subsequently, HRS § 571-54 was amended to eliminate this requirement. To be consistent with statutory amendments, this amendment would permit but not mandate the filing of a motion for reconsideration in Chapter 587 cases prior to appeal.

Rule 60. RELIEF FROM JUDGMENT OR ORDER.

(a) **Clerical mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from any or all of the provisions of a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) of these rules or to reconsider, alter, or amend under Rule 59(e);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceedings was entered or taken. For reasons (1) and (3) the averments in the motion shall be made in compliance with Rule 9(b) of these rules. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

Rule 61. HARMLESS ERROR.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

Rule 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

(a) **[Automatic] No automatic stay: Exceptions - Injunctions, receiverships and accountings.** Unless otherwise ordered by the court, a temporary order or a judgment containing a restraining order, an order of sequestration, or an order appointing receiver, or a judgment or order directing an accounting, or an order for ~~[income assignment for]~~ the payment of child support directly or by income assignment, shall not be stayed during the period after its entry and until an appeal is taken, or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of a restraining order during the pendency of an appeal. When an appeal is taken from any judgment relating to the custody or support of a child or spousal support, the court in its discretion may suspend, modify or grant such judgments during the pendency of the appeal upon such terms as it considers proper.

(b) **Stay on motion for new trial or for alteration or amendment of judgment or order.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay any proceedings to enforce a judgment or order pending the disposition of a motion for a new trial or to alter or amend a judgment or order made pursuant to Rule 59 of these rules, or of a motion for relief from

a judgment or order made pursuant to Rule 60 of these rules, or when justice so requires in other cases until such time as the court may fix.

(c) **Restraining orders pending appeal.** When an appeal is taken from a restraining order or final decree granting, dissolving, or denying a restraining order, the court in its discretion may suspend, modify, restore, or grant a restraining order during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) **Stay upon appeal.** When an appeal is taken the appellant on such conditions that the court may allow may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The stay is effective when approved by the court.

(e) **Stay in favor of the State, etc.** When an appeal is taken by or at the direction of the State or a county, or by an officer or agency of the State or a county, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) **Reserved.**

(g) **Power of supreme court and intermediate court of appeals not limited.** The provisions in this rule do not limit any power of the supreme court or of the intermediate court of appeals or of a justice or judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant a restraining order during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the decree subsequently to be entered.

(h) **Reserved.**

Rule 63. DISABILITY OF JUDGE.

~~[If by reason of retirement, death, sickness, other disability, or absence from the State, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a decision is announced and filed, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that those duties cannot be performed because that judge did not preside at the trial or for any other reason, the replacement judge has the discretion to grant a new trial.]~~

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64. RESERVED.

Rule 65. INJUNCTIONS.

(a) **Reserved.**

(b) **Restraining order; notice; hearing; duration.** A restraining order may be granted without notice to the adverse party when it clearly appears from specific facts shown by affidavit or declaration or by the verified complaint or cross-complaint that immediate relief to the applicant is appropriate. Every restraining order granted without notice shall be filed forthwith in the clerk's office and entered of record, shall be accompanied by an appropriate application for further relief ~~[and notice of]~~, shall be set for a prompt hearing, and shall be served forthwith upon any party or parties affected by the order. It shall continue in effect until further order of the court. [On 2 days] Upon notice to the party who obtained the restraining order without notice, [or on such shorter notice] the adverse party may move to [that party as the court may prescribe;] advance the [adverse party may appear and move for its dissolution or

~~modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require] hearing.~~

(c) **Security.** In all cases, the court, on granting a restraining order or at any time thereafter, may require security or impose such other equitable terms as it deems proper. No such security shall be required of the State or a county, or an officer or agency of the State or a county.

The provisions of Rule 65.1 of these rules apply to a surety upon a bond or undertaking under this rule.

(d) **Form and scope of restraining order.** Every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) **Reserved.**

Rule 65.1. SECURITY: PROCEEDINGS AGAINST SURETIES.

(a) **Security and sureties.** Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

(b) **Who may not be surety.** No attorney or other officer or employee of the court shall become surety on any bond or undertaking in any action or proceeding in this court, unless authorized by the court.

Rule 66. ~~[MASTERS, COMMISSIONERS OR RECEIVERS APPOINTED BY COURT:]~~ RESERVED.

~~[In any action, the court may appoint a master, commissioner or receiver where appropriate. An action wherein a receiver has been appointed shall not be dismissed except by order of the court.]~~

Rule 67. DEPOSIT IN COURT.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with orders of the court.

Rule 68. OFFER OF SETTLEMENT.

At any time more than 20 days before any contested hearing held pursuant to HRS sections 571-11 to 14 (excluding law violations, criminal matters, and child protection matters) is scheduled to begin, any party may serve upon the adverse party an offer to allow a judgment to be entered to the effect specified in the offer. Such offer may be made as to all or some of the issues, such as custody and visitation. Such offer shall not be filed with the court, unless it is accepted. If within 10 days after service of the offer the adverse party serves written notice that the offer is accepted, any party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall treat those issues as uncontested. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible, except in a proceeding to determine costs and attorney's fees. If the judgment in its entirety finally obtained by the offeree is patently not more favorable than the offer, the offeree must pay the costs, including reasonable attorney's fees incurred after the making of the offer, unless the court shall

specifically determine that such would be inequitable [~~in accordance with the provisions of HRS section 580-47 or other applicable statutes, as amended~~].

Rule 69. ENFORCEMENT OF JUDGMENT OR ORDER FOR PAYMENT OF SUPPORT.

A judgment or order for the payment of child or spouse support may be enforced by an order of assignment of income or other methods permitted by statute.

Rule 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the ~~[clerk]~~ court shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the State, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the ~~[clerk]~~ court.

Rule 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES.

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

IX. APPEALS

Rule 72. APPEAL TO THE FAMILY COURT.

(a) **How taken.** Where a right of appeal to the family court is allowed by statute, any person or party allowed by statute may appeal from such decision, order or action by filing a notice of appeal in the family court having jurisdiction of the matter. As used in this rule, the term “appellant” means any person or party filing a notice of appeal, and “appellee” means every governmental body or official (other than a court) whose decision, order or action is appealed from, and every other party to the proceedings.

(b) **Time.** The notice of appeal shall be filed in the family court of the circuit court in which the appellant resides within 30 days of the preliminary ruling or within 30 days after the service of the certified copy of the final decision and order.

(c) **Service.** Promptly after filing the notice of appeal, the appellant shall serve a certified copy thereof upon each appellee.

(d) **Record on appeal.**

(1) **DESIGNATION.** The appellant shall, concurrently with filing the notice of appeal or within 10 days after filing the notice of appeal, prepare and present to the clerk of the court a designation~~[-]~~ that shall specify the papers, transcripts, minutes, and exhibits that the appellant desires filed in the family court in connection with the appeal. The clerk, in the name and under the seal of the court, shall endorse on the designation an order, directed to the official or body whose decision, order or action is appealed from, commanding the latter to certify and transmit such papers, transcripts, minutes and exhibits to the family court within 20 days of the date of the order or within such further time as may be allowed by the court. The clerk shall issue certified copies of such designation and order to the appellant for service upon

the official or body whose decision, order or action is appealed from and for service upon any other appellee. The appellant shall serve certified copies of the designation and order and shall make due return of service thereof to the clerk of the court. The family court may compel obedience to the order by any appropriate process.

(2) **COUNTER DESIGNATION.** Any appellee may, within 10 days after service of the designation and statement of the case, prepare and present to the clerk of the court a counter designation[;] that shall specify additional papers, transcripts, minutes and exhibits which the appellee desires to be filed in the family court. The clerk shall endorse thereon an order, as in the case of a designation, and shall issue the order and counter designation to the appellee for service and return as provided in Rule 72(d)(1) of these rules in the case of a designation and order. The family court may compel obedience to the order by any appropriate process. When the appellee desiring such additional papers, transcripts, minutes and exhibits has official custody of the same, it shall be sufficient that the appellee file the same and identify the same in an accompanying certificate. A copy of such certificate and of any counter designation shall be served forthwith upon the appellant.

(e) **Statement of case.** The appellant shall file in the family court, concurrently with the filing of appellant's designation, a short and plain statement of the case and a prayer for relief. Certified copies of such statement shall be served forthwith upon every appellee. The statement shall be treated, as near as may be, as an original complaint and the provision of these rules respecting motions and answers in response thereto shall apply

(f) and (g) **Reserved.**

(h) **Costs.** No appeal shall be heard, and the appeal shall be dismissed, unless the appellant shall pay all costs, if any, including costs for the transcribing of the transcripts, and furnish every bond or other security, if any, required by law.

(i) **Stay.** The filing of a notice of appeal shall not operate as a stay of the decision, order or action appealed from, unless otherwise provided by statute.

(j) **Reserved.**

(k) **Judgment.** Upon determination of the appeal, the court having jurisdiction shall enter judgment. Such judgment shall be reviewable, or final, as may be provided by law. Promptly after final determination of the appeal in the family court [~~or unless ordered, for good cause shown, by the family court~~] the clerk of the court shall notify the parties and the governmental official or body concerned of the disposition of the appeal.

~~[(f) Briefs.]~~

~~—— (1) BRIEFING SCHEDULES AND SCHEDULING OF ARGUMENT DATES. The court shall issue a briefing schedule which will inform parties that oral argument will be scheduled upon request.~~

~~—— (2) OPENING BRIEF, ANSWERING BRIEF AND REPLY BRIEF. All briefs submitted for appellate review to the family court shall conform with Hawai'i Rules of Appellate Procedure Rule 28.~~

~~—— (3) BRIEFS NOT TIMELY FILED OR NOT IN CONFORMITY WITH RULE. When a brief for the appellant is otherwise not in conformity with these rules or not timely filed, the court may dismiss the appeal. The court may additionally sanction the appellant and may strike appellant's brief. When the brief for the appellee is not filed within the time required or not in conformity with these rules, the brief may be stricken and sanctions including a fine may be levied by the court. In addition, the court may accept as true the statement of facts in the appellant's opening brief. Any party who may be adversely affected by the application of this rule may submit a memorandum or affidavits setting forth the reasons for non-conformance with these rules.]~~

Rule 72.1. BRIEFS.

(a) Briefing schedules and scheduling of argument dates. The court shall issue a briefing schedule which will inform parties that oral argument will be scheduled upon request.

(b) Opening brief, answering brief and reply brief. All briefs submitted for appellate review to the family court shall conform with Hawai'i Rules of Appellate Procedure Rule 28.

(c) Extension of time for briefs. Upon timely

(1) oral request, or

(2) written motion, or

(3) letter request by a party, the clerk of court shall grant one extension of time for no more than 30 days for the filing of an opening or answering brief and no more than 10 days for the filing of a reply brief. The clerk shall note on the record that the extension was granted and the date the brief is due. The requesting party shall notify all other parties that the extension was granted and shall file a copy of the notice in the record. A request is timely only if it is received by the clerk within the original time for filing of the brief. The submission of a request or motion for extension does not toll the time for filing a brief.

(d) Briefs not timely filed or not in conformity with rule. When the brief for appellant is not filed within the time required, the clerk shall forthwith give notice to the parties that the matter will be called to the attention of the court on a day certain for such action as the court deems proper and that the appeal may be dismissed. When the brief of an appellant is otherwise not in conformity with these rules, the appeal may be dismissed or the brief stricken and monetary or other sanctions may be levied by the court with prior notice to the parties. When the brief of an appellee is not filed within the time required, or is not in conformity with these rules, the brief may be stricken and monetary or other sanctions may be levied by the court with prior notice to the parties. In addition, the court may accept as true the statement of facts in the appellant's opening brief. Any party who may be adversely affected by application of this Rule may submit a memorandum, affidavits or declarations, or declarations setting forth the reasons for non-conformance with these rules.

Rules 73. to 76. ~~[DELETED]~~RESERVED.

X. FAMILY COURTS AND CLERKS

Rule 77. FAMILY COURTS AND CLERKS.

(a) Family courts always open. The family courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) ~~[Deleted]~~Reserved.

(c) Clerk's office and orders by clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays. Any order to show cause, summons, subpoena, application for issuing final process to enforce or execute judgments, or notice issued by the court in connection with any case or cause, may be signed by a clerk of the court. The clerk shall grant, sign, and enter the following orders without further direction by the court, but any orders so entered may be set aside or modified by the court:

(1) ORDERS EXTENDING TIME. Orders extending once for 20 days the time within which to file an answer to a complaint if the time originally prescribed to answer or move has not expired.

(2) ORDERS GRANTING EXTENSION. Orders extending once for 15 days the time within which to object to or answer interrogatories to a party or object or respond to a request for production of documents if the time to answer such interrogatories or respond to a request for production of documents has not expired and such extension would not violate a prior court order.

(d) **“Court” and “family court” defined.** As used in these rules the words “court” and “family court” shall mean the family court, the district family court, or a judge of the family court, or of the district family court.

(e) **“Judge” defined.** As used in these rules the word “judge” shall mean a judge of the family court or the district family court.

(f) **Reserved.**

(g) **Costs awarded by the court.** In addition to any other costs allowed by statute or rule, the court may award to a prevailing plaintiff, cross-claimant, or third-party plaintiff the actual cost of service of process, whether service is made by a public or private process server, provided the amount shall not exceed the statutory amount(s) allowed for service of process by sheriffs or police officers.

Rule 77.1. PREPARATION OF CLERK’S MINUTES AND DEPOSIT OF EXHIBITS.

The court shall cause minutes to be prepared for its own use. Such minutes shall be appended chronologically at the bottom of the case file. Immediately upon the conclusion of a proceeding, all exhibits received, together with the original of the exhibit list, shall be deposited with the clerk, who shall acknowledge receipt of same on a copy of the exhibit list, which shall be filed in the file.

Rule 78. MOTION DAY.

Unless local conditions make it impracticable, each family court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Rule 79. CONFIDENTIALITY OF RECORDS.

Unless otherwise provided by statute or rule, all requests for information contained in a confidential record shall be made in writing and shall include the reason for the request.

Rule 80. ~~[STENOGRAPHIC REPORT]~~ REQUEST FOR TRANSCRIPT.

(a) **Request for transcript.** In those cases where trials and hearings are closed by statute, a request for a transcript by someone other than the party or attorney of record shall be made in writing and shall include the reason for the request. Such requests require approval of the court. Upon the request of any person for a transcript of testimony or other court proceeding, the official reporter shall furnish such transcript in the regular order of cases tried or in such order as the court administrator directs. The official reporter shall not furnish a transcript of a confidential proceeding without the court’s written approval, unless otherwise authorized by law. No such transcript shall be provided unless and until transcript fees are prepaid or a deposit is requested and is made. The provisions of the Hawai’i Rules of Appellate Procedure relating to transcripts shall govern requests for transcripts for purposes of appeal. Each request for the transcript of a confidential proceeding shall be in writing and contain a reason for the request. If a request is accompanied by a deposit with the clerk, the deposit shall be further accompanied by directions to the clerk of the court to use it to pay for the reporter’s fees when the transcript is complete. A reporter need not commence preparation of the transcript until the required prepayment or deposit has been made.

(b) **~~[Reserved.]~~ Request for an audio or video recording.** Upon the request of any person for an audio or video recording of the evidence or other court proceeding, the court clerk or other designated official court personnel shall furnish such audio or video recording in the regular order of cases tried or in such order as the court administrator directs. The court clerk or other designated official court personnel

shall not furnish an audio or video recording of a confidential proceeding without the court's written approval, unless otherwise authorized by law. No such audio or video recording shall be provided until appropriate fees are prepaid or a deposit is made. The provisions of the Hawai'i Rules of Appellate Procedure relating to transcripts shall govern requests for audio or video recordings for purposes of appeal. Each request for the audio or video recording of a confidential proceeding shall be in writing and contain a reason for the request. If a request is accompanied by a deposit with the clerk, the deposit shall be further accompanied by direction to the clerk of the court to use it to pay for the appropriate fees when the audio or video recording is complete. The court clerk or other designated official court personnel need not commence preparation of the audio or video recording until the required prepayment or deposit has been made.

(c) **Stenographic report or transcript as evidence.** Whenever the testimony of a witness at a trial or hearing which was stenographically reported or electronically recorded is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony if reported stenographically, or by such person as provided by law or by ~~[the Rules of the Circuit Courts of the State of Hawai'i]~~ rule if reported electronically.

XI. MISCELLANEOUS PROVISIONS

Rule 81. APPLICABILITY.

(a) **Generally.** Part A of these rules, together with the designated supplements, shall apply to the following proceedings in any family court:

- (1) Matrimonial actions under HRS chapter 580, supplemented by Part B (Rules 90 to 101);
- (2) Adoption proceedings under HRS chapter 578, supplemented by Part C (Rules 102 to 120);
- (3) Child Protective Act proceedings under HRS chapter 587;
- (4) Uniform Interstate Family Support Act proceedings under HRS chapter 576B;
- (5) Uniform Parentage Act proceedings under HRS chapter 584;
- (6) Termination of Parental Rights proceedings under HRS chapter 571, part VI;
- (7) Involuntary hospitalization proceedings under HRS chapter 334;
- (8) Guardianship of Person of Minors and Incapacitated Persons under HRS chapter 560, article V;
- (9) Domestic Abuse Protective Order proceedings under HRS chapter 586;
- (10) Uniform Child Custody Jurisdiction Enforcement Act proceedings under HRS chapter 583A;
- (11) Dependent Adult Protective Services proceedings under HRS chapter 346, part X;
- (12) Name Changes under HRS chapter 574;
- (13) Appeals from the Administrative Process for Child Support Enforcement under HRS section 576E-13;
- (14) Any other civil cases over which the family court has jurisdiction.

(b) **Juvenile cases.** Proceedings under HRS sections 571-11(1) and 571-11(2) shall be governed by Part D (Rules 121 to 158).

(c) **Criminal cases.** Cases for adults charged with the commission of a crime coming within the jurisdiction of the family courts shall be governed by the Hawai'i Rules of Penal Procedure.

(d) **Reserved.**

(e) **Conflict.** To the extent that there is any conflict between these rules and the Hawai'i Rules of Civil Procedure, or the Rules of the Circuit Courts, these rules shall prevail.

(f) **Appeals.** Rule 4 of the Hawai'i Rules of Appellate Procedure shall apply to appeals from a family court in proceedings listed in subdivision (a) of this Rule 81.

(g) Depositions and discovery. Chapter V of Part A of these rules, relating to depositions and discovery, shall apply to proceedings listed in subdivision (a) of this Rule 81 except that in any such proceedings:

(1) the court may by order direct that said Chapter V shall not be applicable to the proceeding if the court for good cause finds that the application thereof would not be feasible or would work an injustice; and

(2) if the proceedings be ex parte any deposition therein upon oral examination or upon written questions shall be pursuant to motion and order of court after entry of default pursuant to Rule 55 of these rules, rather than pursuant to notice as set forth in subdivision (a) of Rule 30 or subdivision (a) of Rule 31 of these rules, and in any such case the order of court shall, for all purposes relating to said Chapter V, take the place of said notice.

(h) Reserved.

(i) Applicability in general. These Rules shall apply to all actions and proceedings of a civil nature in any family court and to all appeals to the appellate courts in all actions and proceedings of a civil nature in any family court; and for that purpose every action or proceeding of a civil nature in the family court shall be a “civil action” within the meaning of Rule 2 of these rules.

(j) Reserved.

Rule 81.1. RESERVED.

Rule 82. JURISDICTION AND VENUE UNAFFECTED.

These Rules shall not be construed to extend or limit the jurisdiction of the family courts or the venue of actions therein.

Rule 83. RULES.

The board of family court judges may recommend, for adoption by the supreme court, from time to time, rules of court governing practices and procedure in the family courts and amendments of rules. Copies of rules and amendments, when promulgated by the supreme court, shall be made available to each attorney licensed to practice law in the State. In all cases not provided for by rule, the family courts may regulate their practice in any manner not inconsistent with these rules.

Rule 84. FORMS.

Judges of the family courts may prescribe forms from time to time consistent with these rules and law.

Rule 85. TITLE.

These Rules shall be known and cited as the Hawai‘i Family Court Rules (HFCR).

Rule 86. ~~[RESERVED.]~~ WITHDRAWAL OF PAPERS AND EXHIBITS.

The clerk shall permit no pleading or paper to be taken from his or her custody except as otherwise provided in these rules, or as ordered by the judge. Exhibits may be withdrawn on the written approval of a judge against a written receipt therefor, and the party shall file a copy of the receipt in its place unless otherwise ordered. Unless otherwise ordered by the court, the parties shall withdraw all exhibits not attached to the pleadings, and depositions within one year after final judgment. If not so withdrawn, they shall be deemed abandoned and may be disposed of by the clerk.

Rule 87. ATTORNEYS.

(a) **Withdrawal of counsel unnecessary.** After entry of a judgment finally determining all issues in the judgment and after the expiration of the time for taking an appeal which lies from such judgment, the attorney shall no longer be considered attorney of record for this purpose. No withdrawal as counsel of record need be filed for this purpose. If any issue is specifically reserved in any judgment for further hearing or future determination (as distinguished from reviews of a judgment where no issue is reserved for future determination and from issues over which the court has continuing jurisdiction to act by law), the attorneys of record for the parties shall continue to be attorneys of record for the service of pleadings relating to those reserved issues, but for no other purpose, until such time as the reserved issues are resolved and until after the expiration of the time for taking an appeal which lies from the judgment resulting from the resolution of such reserved issues, unless the withdrawal is expressly approved and allowed by the court.

(b) **Court approval of withdrawal necessary.** Whenever a party is represented by an attorney at any stage of a proceeding, such attorney may not withdraw as counsel of record without the approval of the court.

(1) **WITHDRAWAL AND SUBSTITUTION OF COUNSEL.** Such approval may be obtained, without hearing, where there is a withdrawal and substitution of counsel in writing, approved by the party. After a withdrawal and substitution of counsel is approved by the court, the withdrawing attorney shall immediately deliver a copy to the attorney of record for the adverse party, or if the adverse party is not represented by an attorney, shall mail a copy to the adverse party at the adverse party's last known address.

(2) **MOTION TO WITHDRAW AS COUNSEL.**

(A) Such approval may be obtained after a hearing on a motion to withdraw as counsel, which motion and notice of the date and time of hearing have been served on the client and the adverse party or the adverse party's attorney, if any, and the attorney seeking to withdraw shall submit proof of service at the hearing.

(B) Where service of the motion to withdraw as counsel cannot be effected, the motion and notice of the date and time of hearing shall be mailed to the last known address of the client and shall also be served on the adverse party or the adverse party's attorney, if any, and the attorney seeking to withdraw shall submit proof of service at the hearing.

(C) After a withdrawal of counsel is granted and entered, the withdrawing attorney shall immediately mail or deliver a copy of the order permitting withdrawal of counsel to the attorney of record for the adverse party, if any, or shall mail a copy to the adverse party at the adverse party's last known address if the adverse party is not represented by an attorney and shall also mail a copy to the client at the client's last known address.

Rule 88. RESERVED.

Rule 89. EXPEDITION OF COURT BUSINESS: SANCTIONS.

(a) **Required notice.** Attorneys shall advise the court promptly if a case is settled. An attorney who fails to give the court such prompt advice may be subject to such sanction as the court deems appropriate.

(b) **Submission of documents, adherence to court policy.** An attorney who, without good cause, fails to submit documents in a timely manner in accordance with these rules, or who fails to adhere to these rules or applicable statutes, may be subject to such sanction as the court deems appropriate.

(c) **Effect of failure to appear or tardiness.** An attorney who, without good cause, fails to appear or is tardy when the attorney's case is before the court on call, motion, pre-trial or trial or who unjustifiably fails to prepare for a presentation to the court necessitating a continuance, may be subject to such sanction as the court deems appropriate.

PART B. Matrimonial or Civil Union Actions

I. COMMENCEMENT OF ACTION: PLEADINGS

Rule 90. MATRIMONIAL OR CIVIL UNION ACTIONS; DOCUMENTS.

(a) **Definition.** A matrimonial or civil union action shall be an action for annulment, divorce, separation or separate maintenance.

(b) **Documents required.** At the time of filing, the complaint or cross-complaint shall be accompanied by such other documents as may be required by the court.

Rule 91. ~~[DELETED]~~RESERVED.

Rule 92. ~~[DELETED]~~RESERVED.

II. TRIALS

Rule 93. ~~[DELETED]~~RESERVED.

Rule 94. SETTING CONTESTED MATTERS FOR TRIAL.

(a) **Motion to set.** Upon the filing of an answer or upon the personal appearance of an adverse party or an adverse party's attorney, either party may at any time ~~[,but no later than 9 months from the filing of the complaint,]~~ file a motion to set the case for trial. Such a motion ~~[constitutes]~~ shall be filed no later than 9 months after a complaint has been filed or within any further period of extension granted by the court upon motion or stipulation of the parties.

Such a motion shall contain the following information:

(1) the movant's declaration that a bona-fide attempt to settle the issues in said case has been made, that mediation has been attempted or is inappropriate for reasons specified in said motion, and that these efforts have been unsuccessful[, and that all discovery allowed by statute or rule has been substantially completed. The movant shall attach to the motion current income and expense and asset and debt statements, a written statement specifying the movant's position on all the issues and such other documents as may be required by the court. Respondent shall file and serve the Respondent's statements no later than 1 week prior to the Motion to Set conference.];

(2) and that all necessary or proper preliminary proceedings, including all discovery allowed by statute or rule and desired by movant have been completed by the movant, or that there is sufficient time to complete the same before trial, that the other party has had a reasonable opportunity to complete all preliminary proceedings including discovery, and that the case is otherwise ready for trial.

~~[(b) Further proceedings. In conformance with Rule 16 of these rules, the court may set deadlines for completion of discovery, submission of exhibits and witness lists and hold pre-trial and settlement conferences and calendar calls to consider all matters as may aid in the disposition of the action.]~~

~~[(c) Non-appearance; failure to comply. If an attorney fails to appear at any conference set by the court, or unjustifiably fails to comply with any requirements enunciated in paragraphs (a) or (b) above, sanctions may be imposed pursuant to Hawai'i Circuit Court Rule 15(b) or Rules 37(b) and 89 of these rules. If a pro se party fails to appear or to comply with said requirements, sanctions as provided in Rule 37(b) of these rules may be imposed.]~~

Such a motion shall attach the following information:

(1) the movant's current income and expense and asset and debt statements,

(2) a written statement containing a statement of facts, a description of the movant's position on all of the issues, and the factual and legal bases of the movant's positions; and

(3) such other documents as may be required by the court.

(b) Response to Motion to Set. Respondent shall file and serve a response to the Motion to Set no later than 30 days after receipt of the Motion to Set or if the Motion to Set conference is scheduled within 30 days of service, then a response to the Motion to Set shall be filed no later than 14 days after receipt of the Motion to Set. The response shall include the same information and attachments at the Motion to Set itself.

(c) Motion to Set conference. Upon the filing of the Motion to Set, the court shall schedule a conference to determine whether to set the case for trial and the pretrial deadlines associated with any trial setting. The conference shall be attended by each party and their counsel, if any. The court shall:

- (1) Assign a trial date, if appropriate;
- (2) Continue the conference to a future date, if appropriate; and
- (3) Discuss and require alternative dispute resolution options, if appropriate.

At the conference the court may also set deadlines for the completion of discovery, the submission of exhibits, exhibit lists, and witness lists, and may schedule a pre-trial conference, settlement conferences, and calendar calls to consider all matters as may aid in the disposition of the action.

(d) Third party practice. If a third party is joined in the action after the filing and service of the Motion to Set, the court shall set appropriate deadlines for the filing and service of position statements by all the parties, including the third party. All parties asserting affirmative claims against the third party shall file and serve (in accordance with Rule 5 of these rules) a position statement against the additional party in accordance with the deadline set by the court. The position statement shall set forth the same kind of information as required by subsection (a) of this Rule. The third party shall file and serve (in accordance with Rule 5 of these rules) a responsive position statement that sets forth the same kind of information required by subsection (b) of this Rule within the time period set by the court.

(e) Deviation in time for filing. Deviations from the time requirements for the filing of any document under this Rule shall be allowed only by order of the court upon good cause shown.

(f) Sanctions; non-appearance; failure to comply. If a party (whether represented by an attorney or not), or an attorney fails to appear at any conference set by the court, or unjustifiably fails to comply with any requirements enunciated in this Rule, sanctions may be imposed pursuant to Rules 37(b) and 89 of these rules.

Rule 94.1. SETTLEMENT CONFERENCE; SETTLEMENT CONFERENCE STATEMENT; CONFIDENTIAL SETTLEMENT CONFERENCE LETTER.

(a) Settlement conference. A settlement conference may be ordered by the court at any time before trial. Any party may also file a request for a settlement conference at any time prior to trial. A settlement conference shall be subject to the following guidelines:

- (1) Each party to the action shall attend the settlement conference unless excused by the court;
- (2) For each party represented by an attorney, that attorney shall attend the settlement conference and shall be familiar with all aspects of the case prior to the settlement conference;
- (3) Each party and their attorneys, if any, shall have thoroughly evaluated the case;
- (4) The judge conducting the settlement conference may, at the conclusion of said conference, continue said conference to another time and date, and from time to time thereafter for continued settlement negotiations if he or she has reason to believe a settlement can thereby be effectuated;

(b) Confidential settlement conference letter. In its discretion, the court may require each party to deliver directly to the settlement conference judge a confidential settlement conference letter, which shall not be filed or served upon the other parties.

The confidential settlement conference letter shall not be made a part of the record and confidential information contained in the letter shall not be disclosed to the other parties without express authority from the party submitting the letter. The court shall destroy the confidential settlement conference letter no later than the entry of the final judgment in the case.

The confidential settlement conference letter shall include a description of the major issues in dispute, a forthright evaluation of each party's likelihood of prevailing on their positions, counsel's good faith evaluation of the case, and any other information requested by the court.

(c) Sanctions. If a party (whether represented by an attorney or not) or an attorney fail to appear at any settlement conference set by the court, or unjustifiably fails to comply with any requirements enunciated in this Rule, sanctions may be imposed pursuant to Rules 37(b) and 89 of these rules. Such sanctions may include:

- (1) Ordering a party to pay the opposing party's reasonable expenses and attorneys' fees;
- (2) Ordering a change in the trial date of the action;
- (3) Imposing any other sanction as may be appropriate.

Rule 94.2. TRIAL CALENDAR.

The court shall prepare and maintain a trial calendar. All cases placed on the trial calendar shall be assigned to any judge available for trial during the week the trial is set unless it is continued for good cause.

When any case that has been set for trial is called for a calendar call, a pretrial conference, a settlement conference, or trial itself after timely notice to all attorneys or parties not represented by counsel, the court may, on its own motion or on the motion of any party, dismiss such action or hold one party in default, as the case may be, if any of the parties fail to appear.

Any case, whether on the trial calendar or not, may be advanced and set for a pretrial conference or a settlement conference upon order of the court.

Rule 94.3. PRE-TRIAL CONFERENCE, PRE-TRIAL DISCLOSURE AND MARKING EXHIBITS.

(a) Disclosures and exhibits. When a pre-trial conference is held, except as and to the extent otherwise ordered by the court:

(1) Each party shall disclose the theory of his or her case, including the basic facts that he or she intends to prove and the names and addresses of all witnesses that he or she intends to call.

(2) Each party shall submit to the other party by the exchange date listed in the pre-trial order an Exhibit List and all exhibits which are in his or her possession or under his or her control which he or she intends to offer in evidence at the trial.

(3) Unless so disclosed and exchanged, no exhibits required to be disclosed and exchanged by paragraph (2) shall be received in evidence at the trial over objection unless the court finds that there was reasonable ground for failing to disclose and exchange such exhibits prior to trial.

(4) All exhibits required to be disclosed by paragraph (2), and any other exhibits as may be requested by counsel presenting the same, shall be marked for identification and submitted to the court no later than at calendar call unless another deadline is listed in any pre-trial order.

(5) Each party shall provide any other documents or disclose any other information that the court deems necessary for trial. Any such documents or information shall be provided in accordance with the terms ordered by the court.

(b) Effect of Pre-Trial Order. The pre-trial order shall supersede the pleadings where there is any conflict; and shall supplement the pleadings in all other respects.

Rule 95. [DELETED]RESERVED.

III. JUDGMENTS AND ORDERS

Rule 96. ~~[DELETED]~~RESERVED.

Rule 97. MAILING A COPY OF JUDGMENT OR ORDER.

Within 2 days after a judgment or order is filed in any case, the attorney preparing the same shall mail or deliver 2 certified copies of the judgment or order and 2 copies of any agreements of the parties referred to therein to the attorney for the other party in case such party is represented by an attorney, or shall mail or deliver a certified copy of the judgment or order and a copy of such agreement to the other party at the other party's last known address if the other party is not represented by an attorney. Proof of mailing or delivery of the certified copies of the judgment or order within the 2-day period to the attorney for the other party or to the party shall be made to the court forthwith. Failure to comply with this rule may be considered as grounds for relief from the judgment under Rule 60(b)(3) or 60(b)(6) of these rules.

IV. MISCELLANEOUS

Rule 98. JUDGMENTS APPROVED AS TO FORM AND CONTENT BY THE PARTIES IN UNCONTESTED MATRIMONIAL ACTIONS.

Divorce judgments in uncontested actions not incorporating a separate agreement incident to divorce shall be approved as to form and content by both parties and as to form or form and content by their attorneys, if any. If the judgment incorporates a separate agreement incident to divorce, then only the opposing attorney, or party if pro se, need approve the judgment as to form or form and content.

Rule 99. ~~[DELETED]~~RESERVED.

Rule 100. ~~[DELETED]~~RESERVED.

Rule 101. ~~[DELETED]~~RESERVED.

PART C. ADOPTION

I. COMMENCEMENT OF ACTION: PLEADINGS; PARTIES; PROCESS

Rule 102. ~~[DELETED]~~RESERVED.

Rule 103. PLEADINGS.

(a) and (b). Deleted.

(c) Names. Proof of full legal names shall be required in all cases, unless excused by the judge for good cause.

(1) **OF PETITIONERS.** The name of the petitioner or petitioners shall be set forth in the title of the action. Wherever names appear in the pleadings, they shall be written in full and without initials. The name of a married woman shall include her first or given name, her middle name, if any, her maiden name and if she has assumed it, the surname of her husband, and the same procedure shall be required of a widow and of a divorcee who retains the surname of her former husband.

(2) **OF INDIVIDUAL.** The title of the action shall not include the name of the individual to be adopted but shall identify the individual only by its sex and date of birth.

In a nonconsent petition, when it is necessary to allege and prove certain grounds which permit

dispensing with the consent, the name of the minor child sought to be adopted shall be included in the allegations but not in the title.

(d) **Signing of petition.** Every petition for adoption shall be signed by the petitioner or petitioners and may be executed under penalty of perjury.

(e) **More than one individual in a petition.** The filing of one petition for adoption of more than one individual shall be allowed only when the individuals who are born in or out of wedlock are full siblings and all of the individuals are being adopted by the same petitioner or petitioners. Separate petitions shall be filed when the individuals are born out of wedlock to the same mother but different fathers.

(f) - (h). ~~[Deleted]~~Reserved.

Rule 104. ~~[DELETED]~~RESERVED.

Rule 105. ~~[DELETED]~~RESERVED.

II. HEARING

Rule 106. HEARING.

(a) **Who must attend.** The petitioner or petitioners, any legal parent married to a petitioner, and any individual age 10 or over who is the subject of the adoption proceedings shall personally appear at the hearing, unless excused by the court. Where the petitioner is related by blood to the child sought to be adopted, a natural and legal parent or the legal adoptive parent or parents who consented to the adoption shall personally appear at the hearing if such person is residing within the circuit of the court hearing the petition, unless excused by the court.

(b) **Procedures at the hearing.**

(1) When a petitioner does not know the identity of one or both of the child's parents, the petitioner shall be excluded from that portion of the hearing at which is presented the evidence concerning the child and the child's parentage and background. After submission of such evidence, the petitioners may then be brought before the court to testify on the petitioners' background and suitability to be the adoptive parents for the child.

(2) When all petitioners know the identity of the child's parents, their background and reasons for giving the child up for adoption, all evidence may be submitted to the court at the same hearing.

Rule 107. DEFAULT.

When a respondent nonconsenting parent, having been duly served with notice of time and place of hearing, fails to answer or otherwise defend, and that fact is made to appear by affidavit or declaration or otherwise, the court may proceed with the hearing without further notice to the respondent.

Rule 108. CONTESTED HEARING; MOTION TO SET.

Upon the filing of an answer, either the petitioners or the respondent nonconsenting parent may at any time file a motion to set the matter for trial. On the return date of the motion, both sides shall attend, and in the event that only one side appears, that appearing party shall notify the other side of the setting, by letter, with a copy for the court file, and the party who did not appear (in person or by attorney) will be presumed to have agreed to that setting.

Rule 109. ~~[DELETED]~~RESERVED.

Rule 110. FINDINGS OF THE COURT.

Notwithstanding Rule 52 of these rules, following the hearing, written findings of fact and conclusions of law that shall be prepared by the court or by the attorney for the petitioner or petitioners[5] shall be entered in each case.

Rule 111. ~~[DELETED]~~RESERVED.

Rule 112. RESPONSIBILITY OF ATTORNEY AFTER ENTRY OF DECREE.

(a) **To obtain new birth certificate for individual.** It shall be the responsibility of the attorney to assist the petitioners in obtaining the amended birth certificate for the individual evidencing the legal relationship of the individual to the adoptive parents.

(b) **To distribute copies.** The court may authorize, for immigration, naturalization, allotment and other valid purposes, the issuance of copies of findings of fact and conclusions of law and decrees which shall be given to the attorney for forwarding to the adoptive parents. Copies authorized for filing in termination proceedings or with the department of human services or other agency entitled thereto shall be forwarded by the clerk of the court unless otherwise ordered.

Rule 113. ~~[DELETED]~~RESERVED.

III. MISCELLANEOUS

Rule 114. DISMISSAL OF ACTIONS.

Notwithstanding Rule 41 of these rules, an action shall not be dismissed at the petitioner's instance save upon order of the court based on a motion and an affidavit or declaration in support of the motion signed by the petitioner and upon such conditions that the court deems proper. Upon the entry of an order of dismissal, the petitioner shall mail a certified copy of the order of dismissal to the parents, other than the spouse of the petitioner, unless mailing a copy of the order is dispensed with by the court.

Rule 115. DISPOSITION OF MINOR CHILD ON DISMISSAL, WITHDRAWAL OR DENIAL OF PETITION.

Upon the dismissal or withdrawal or denial of any petition for adoption, the court may make appropriate temporary orders concerning the care, custody and control of a minor child involved and may refer the minor child to the department of human services or to another appropriate agency or officer for action as in the case of a minor child subject to HRS sections 571-11(1), (2), and (9).

Rule 116. ~~[DELETED]~~RESERVED.

Rule 117. ~~[DELETED]~~RESERVED.

Rule 118. AFFIDAVITS OR DECLARATIONS REQUIRED IN DOCTOR AND OTHER THIRD PERSON PLACEMENTS CASES, AND WHEN MOTHER'S AFFIDAVIT OR DECLARATION IS REQUIRED.

(a) **Attorney's affidavit or declaration of birth background.** In every adoption where placement through a doctor or other qualified non-agency person, is made of a child with proposed adoptive parents to whom the child bears no relationship, the attorney for the petitioner or petitioners shall, before or at the time of the hearing of the petition, file an Affidavit or Declaration of Birth Background with the court containing in substance the following information:

- (1) the name and age of the natural mother and the name and age of the natural father, if known;
- (2) the name of the child at birth and the place and date of birth;

- (3) the marital status of the natural mother at the time of the birth of the child;
- (4) the racial backgrounds, physical descriptions, educational backgrounds, occupations, religion and health backgrounds of the natural mother and the natural father;
- (5) special requests of either parent relating to placement, if any;
- (6) whether or not counseling was provided either parent or reason none was obtained;
- (7) the total number of times the attorney saw the natural mother and information regarding the consistency of her indicated desire to place the child in the manner proposed; and
- (8) if the natural mother is an unmarried minor, the name and relationship of the person endorsing her consent, if an endorsement is made.

(b) Natural mother's affidavit or declaration of relationship with natural father. In every adoption in which the child sought to be adopted is born out of wedlock where the natural father who has notice of the birth or expected birth of the child has not given his written consent, in order for the court to determine whether the consent of the natural father is not required or may be dispensed with or whether or not notice of the adoption proceeding must be given to the natural father, the natural mother shall, before the hearing, sign an affidavit or declaration containing the following information regarding her relationship with the natural father:

- (1) whether or not the natural father knew about or was told of the pregnancy and/or the birth of the child;
- (2) whether or not the natural mother and the natural father cohabited with each other before or after the birth of the child and, if so, for what duration;
- (3) whether or not the natural father contributed toward the hospital and medical expenses in connection with the birth of the child and, if so, how much and, if he did not, who did pay such expenses;
- (4) whether or not the natural father has contributed toward the support of the child and, if so, to what extent and, if not, who did support said child;
- (5) whether or not the natural mother filed any paternity action against the alleged natural father and, if so, whether or not the alleged natural father was adjudicated to be the natural father of the child; and
- (6) whether or not the name of father appears on the child's birth certificate. The affidavit or declaration shall be presented to the judge for review prior to the filing of the petition.

(c) Foreign adoption placement agency's affidavit or declaration. In an adoption where placement is made of a child through a foreign adoption agency, and the mother's affidavit or declaration, as required by (b), is not obtainable, the foreign adoption agency, which placed the child, may submit an affidavit or declaration containing the following:

- (1) information the agency possesses relating to the relationship between the natural mother and the natural father;
- (2) how the agency possesses this information;
- (3) whether or not the natural father ever attempted to contact the child while the child was in the custody of the agency; and
- (4) the attempts made by the agency to contact the natural mother to secure the affidavit or declaration required by (b).

The local adoption agency which placed the child with the adoptive parents, in conjunction with the foreign adoption agency, shall submit the affidavit or declaration to the judge for review, together with its report and documents relating to the child to be adopted.

Rule 119. [~~DELETED~~]RESERVED.

Rule 120. [~~DELETED~~]RESERVED.

PART D. JUVENILE PROCEEDINGS

I. GENERAL PROVISIONS

Rule 121. PURPOSE AND SCOPE; DEFINITIONS.

(a) **Purpose and scope.** The purpose of these rules is to implement the provisions of the Hawai'i Family Court Act, Chapter 571, Hawai'i Revised Statutes, relating to cases coming under sections 571-11(1) and (2).

(b) **Definitions.** In addition to statutory definitions set forth in HRS section 571-2 as used in these rules, unless the context requires another meaning:

(1) "Adjudication hearing" means a hearing for the purpose of determining whether the allegations of a petition are admitted or established under the provisions of HRS chapter 571, and these rules.

(2) "Complaint" means an oral or written report to the court concerning a child who is alleged to come within the provisions of HRS section 571-11(1) or (2).

(3) "Custodian" means a parent or other person or an agency having or legally exercising the physical custody of a child.

(4) "Disposition hearing" means a hearing for the purpose of determining what shall be done on behalf of a child who has been adjudged to come within the provisions of HRS section 571-11(1) or (2).

(5) "Parent" means a legal parent of a child who is the legal subject of a court proceeding. If the child has no legal parents but does have a legally appointed guardian of the child's person, such legal guardian shall be deemed to be the parent for the purpose of these rules unless the court shall have appointed a guardian ad litem for the child pursuant to these rules in which event the guardian ad litem shall be deemed the child's parent.

(6) "Party" means a child who is the subject of a court proceeding; or the parent, guardian, or legal custodian of such child; or any person or agency denominated by the statute or the court as a party in a given case.

(7) "Petition" means the legal document containing the allegations upon which the court's jurisdiction is based.

(8) "Transfer hearing" or "Waiver hearing" means a hearing for the purpose of determining whether a person should be transferred for trial as an adult for a felony offense allegedly committed during the person's minority.

II. INTAKE

Rule 122. RECEPTION OF COMPLAINT.

Complaints shall be processed in accordance with HRS section 571-21. If the court's staff refuses, after a demand by the complainant, to recommend the filing of a petition, the complainant shall be informed of the reasons for the refusal of the complaint and shall be advised that the complainant may submit such complaint, in writing, to a judge of the court, who may order the filing of a petition or may affirm the action of the court's staff.

Rule 123. INTAKE PROCEDURE.

If the alleged facts recited in the complaint appear to be legally sufficient for the filing of a petition, and if they are serious enough to warrant further investigation by the court, the court may request the child and the person or persons who have the child's custody to attend an intake interview. The court officer may schedule a subsequent interview with a member of the court staff in an attempt to adjust the matter informally without the filing of a petition. At any time during the intake process, the

court officer may terminate the effort at adjustment and recommend the filing of a petition. If the child denies the petition, all information pertaining to the allegations contained in the petition obtained during the intake interviews shall be inadmissible at the adjudication hearing. Said information shall be considered only in the disposition of an adjudicated petition.

Rule 124. INFORMAL ADJUSTMENT PROCEDURE.

The court officer shall inform the parties that informal adjustment will not constitute an adjudication of jurisdiction and that if they wish the facts to be determined by the court at a hearing, no effort will be made to arrive at informal adjustment. If the court decides to continue the intake process to attempt informal adjustment of the complaint, plans for continuing contact with the child by the probation department without the filing of a petition shall be discussed. The parties shall be informed that information obtained from them by the probation department during the intake period will not be admissible in evidence against them at the adjudication hearing, that they need not continue to participate in the adjustment process; and that the effort at informal adjustment shall not prevent the filing of a petition at a future date. However, no such petition shall be filed if 90 days have elapsed after the complaint has been received by the court unless prior thereto an extension of the time for filing has been approved by a judge.

The parties shall be informed, however, that an informal adjustment if agreed upon is tantamount to an admission of the child's complicity in the commission of the offense and that this information may be considered at a disposition hearing for any subsequently adjudicated offense.

III. PETITION

Rule 125. CONTENTS OF PETITION.

The petition shall set forth, in plain language and with reasonable particularity, the date, place, and manner of the acts alleged and the law or standard of conduct allegedly violated.

Rule 126. RESPONSIVE PLEADING OR MOTION.

A party may file a written pleading or motion supported by affidavit or declaration to the allegations of the petition before the hearing. Such pleading shall be made available to the other parties at least 48 hours prior to the hearing.

Rule 127. AMENDMENT OF PETITION.

A petition may be amended by order of the court at any time before an adjudication, provided that in cases alleging law violations the charge shall not be enlarged thereby, and provided further that the court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing.

IV. TRANSFER TO CRIMINAL COURT

Rule 128. ~~[DELETED]~~RESERVED.

Rule 129. TRANSFER OR WAIVER HEARING.

The person shall be represented by counsel at any transfer or waiver hearing. If, after the transfer or waiver hearing, the court orders the case to be transferred to criminal court, it shall make specific findings supporting its decision.

V. SHELTER AND DETENTION

Rule 130. ADMISSION TO SHELTER OR DETENTION.

Admission to a shelter or detention facility shall be in accordance with HRS section 571-31.

Rule 131. NOTICE OF ADMISSION TO SHELTER OR DETENTION.

The person in charge of the facility shall notify any child admitted to shelter or detention of the reasons for the action and of the child's rights under Rules 154 and 155 of these rules. That person shall also notify the child that a hearing will be held by the court concerning the necessity for shelter care or detention.

The court, parents, guardian, or custodian of the child shall be immediately notified that the child has been admitted to such shelter or detention facility. They shall be informed that there will be a prompt hearing by the court regarding release or detention.

Rule 132. TELEPHONING AND VISITATION.

A child may telephone the child's parents, guardian, custodian, and attorney immediately after being admitted to a shelter or detention facility.

Upon being admitted to a shelter or detention facility, a child may be visited in private at any time by the child's attorney, parents, guardian, or custodian. After the initial visit, the child may be visited by them at reasonable visiting hours.

Rule 133. CONTINUED DETENTION.

Continued detention of the child shall be in accordance with HRS section 571-32(b).

Rule 134. PREHEARING PROCEDURE.

Upon receipt of notice of admission by the court, a prompt investigation shall be made of a child who has not been released by the director of detention services or other person with custody of the child. The investigation shall be made by a member of the court's staff who shall prepare a report of the investigation in writing to include (a) whether or not the child requires care away from the child's home and the reason therefor; (b) if so, whether or not the child requires secure physical restriction either for the child's own welfare or for the safety of the community; (c) what agencies or individuals other than the court and its staff are currently active in treatment or consultation with the child or the child's family; (d) what efforts have been made to notify such agencies or individuals of the detention hearing; and (e) what alternatives are available other than continued detention.

In the event that the child is within the court's jurisdiction under the provisions of HRS section 571-11(1) or (2) as the result of a previous adjudication, the probation officer assigned to the case, or the probation officer's supervisor, shall be notified of the child's detention, and shall be consulted prior to the child's release before the detention hearing. Whenever possible, the probation officer, or the probation officer's substitute, shall be present at the initial detention hearing.

Rule 135. DETENTION HEARING.

At the detention hearing, the court may admit any testimony and other evidence relevant to the necessity for detaining the child, including the report of investigation required by Rule 134 of these rules. Any written reports or social records made available to the court at the hearing shall be made available to the parties at or before the hearing, provided that the judge may withhold such material from the child if the judge reasonably believes that to do so would be in the best interest of the child. A copy of the petition, if one has been filed, but not yet served, shall be given to each of the parties at or before the hearing.

A detention hearing may be held without the presence of the child's parents, guardian or custodian if they cannot be located or refuse or neglect to attend.

At the conclusion of the hearing, the court shall order the child released from shelter care or detention, or it shall issue an order authorizing either shelter care or detention for up to seven days, subject to extension pursuant to Rule 136 of these rules. If the child is not released and in the event that an adjudication hearing is to be scheduled, a petition shall be filed within seven days of the initial detention hearing, unless an extension of time is authorized by the judge.

Rule 136. REVIEW OF DETENTION ORDERS.

If a child held in shelter care or detention by court order has not been released after a detention hearing or a review pursuant to this rule or has not appeared at an adjudication hearing within eight days, the court shall review the child's case, either in a review hearing or by review of the child's file at least once every 8 days.

VI. THE ADJUDICATION HEARING

Rule 137. RESERVED.

Rule 138. SUMMONS.

The parties shall be entitled to the issuance of compulsory process for the attendance of witnesses on their behalf or on behalf of the child.

Rule 139. CONTENTS OF SUMMONS.

If it appears from the petition and such investigation as has been made that the child is in such condition or surroundings that the child's welfare requires that the child be taken into custody, the court may order, by endorsement upon the summons, that the person serving the summons take the child into custody. A summons so endorsed shall be served by a police officer, a probation officer, or any other person therein authorized to take the child into custody.

Rule 140. ORDER OF PROCEEDINGS.

Before taking testimony, the court shall explain to the child and the child's parents their rights as set forth in Rules 154 and 155 of these rules.

The court may then inquire of the child in a case brought under HRS section 571-11(1) or (2) whether the child admits or denies all or some of the allegations in the petition. Failure or refusal of the child to admit the allegations shall be deemed a denial of them.

If any or all of the allegations of the petition admitted by the child are sufficient to give the court jurisdiction, the court may take testimony to corroborate the admission or otherwise to establish the allegations of the petition. If any of the allegations of the petition required to be established to give the court jurisdiction are denied by the child, the court may proceed to hear such evidence as is presented in support of such allegations and of the prayer of the petition. The court may order that any allegations denied by the child and which are not supported by adequate proof or not required to be heard be stricken from the petition. If the court is satisfied after consideration of all of the facts and circumstances presented that the prayer of the petition should be granted, it may then proceed with the adjudication.

Rule 141. ~~[DELETED]~~RESERVED.

Rule 142. EXTRA-JUDICIAL STATEMENTS.

No extra-judicial statement by the child made as a result of a custodial interrogation by a police officer shall be admitted into evidence absent a showing that required warnings of the child's constitutional rights were given the child in a meaningful way; that the child was informed of the child's right to have the child's parents or other adult present during any custodial interview; that any waiver of said rights was express and made with understanding; and that the statement itself was made voluntarily and without coercion or suggestion. In determining the admissibility of an extra-judicial statement, attention shall be given to the totality of circumstances in giving the warnings and obtaining the statement, including an examination into compliance with the provisions of HRS section 571-31.

Rule 143. STANDARD OF PROOF.

Except in cases arising under the court's jurisdiction through HRS section 571-11(1), the facts alleged in the petition shall be proved by a preponderance of the evidence. In law violation cases arising under HRS section 571-11(1) all material facts shall be proved beyond a reasonable doubt.

Rule 144. FINDINGS.

If, upon the conclusion of the adjudication hearing, the court determines that the material allegations of the petition are established, or that a lesser included offense has been proved, it may enter an order granting the prayer of the petition.

If, after such determination and action, the disposition hearing is not to be held immediately and the child is in detention or shelter care, the court shall determine whether the child shall be released or continued in detention or shelter care.

Rule 145. RESERVED.

Rule 146. RESERVED.

Rule 147. RESERVED.

Rule 148. DISMISSAL OF PETITION.

The court may at any time dismiss a petition and thus terminate the proceedings relating to the child if such action is in the interest of justice and the welfare of the child.

VII. THE DISPOSITION HEARING

Rule 149. SOCIAL STUDY.

A social study, consisting of an investigation and evaluation of the child, shall be prepared or procured by the probation department in all proceedings under the provisions of HRS section 571-11(1) or (2), unless this requirement is waived by the court.

A social study shall not be commenced before the adjudication hearing in denial cases without the consent of the parties. If the adjudicating officer wishes additional information not reflected in the study, the hearing may be postponed or continued for a reasonable time.

Rule 150. CHILDREN UNDER COURT JURISDICTION: INITIATION OF REVIEW PROCEEDINGS.

When it appears to the court's staff that, because of a violation of law or of a supervisory order, a child under the court's jurisdiction should be removed from the child's home or that the child's probation

should be revoked, or special conditions imposed, it shall file a motion for review and change of decree. Such motion shall include a statement of the facts and shall set forth the reasons for the proposed review and change.

Upon receipt of the motion, the court may order a hearing to determine the allegations of the motion.

The court may modify a condition of protective supervision or probation included in its decree. Such modification shall be given to the parties in writing, and the parties may petition the court to hold a hearing on the advisability of the modification.

VIII. MISCELLANEOUS

Rule 151. JUDGMENT.

Upon the termination of the disposition hearing, the court shall enter an appropriate judgment of disposition.

Rule 152. PRESENCE AND EXCLUSION OF PARTIES.

Except in those hearings in which the child's behavior is not at issue, the child and a parent should be present at the commencement of hearings. If the child's behavior is not at issue, the hearing may, in the court's discretion, begin without the child's presence. If a continuance for the purpose of securing the attendance of a party or for any other reason is advisable to ensure a fair hearing, it should be granted. If for some reason found valid by the court no parent can be present, the court may appoint a guardian ad litem prior to the hearing.

Rule 153. NOTICE TO CHILDREN.

Whenever these rules authorize notices to be given to a "child", the word shall be construed to refer to a child 12 years of age or more or as defined by statute. If a child is less than 12 years old, the child's legal parent or parents, custodian or guardian shall receive the notices authorized by these rules. If the interests of the child and those of the parents appear to conflict, or if neither parent is available, the court shall appoint a guardian ad litem, or counsel, or both, to protect the interests of the child. Such a guardian or counsel shall receive the notices authorized by these rules.

Rule 154. RIGHT TO REMAIN SILENT.

A child who is the subject of a court proceeding because of the child's alleged violation of law under HRS section 571-11(1), or because of the child's alleged violation of a required standard of behavior under HRS section 571-48, or who is to be interrogated for the purpose of deciding whether to commence a court proceeding, may remain silent as of right through any or all questions posed during such proceedings or interrogations, and shall be so advised.

Rule 155. RIGHT TO COUNSEL.

The parties may be represented by counsel retained by them in all proceedings. In all proceedings under HRS sections 571-11(1) and (2), the court may appoint counsel for the child in any situation in which it deems advisable.

IX. OTHER PROCEDURES AND REQUIREMENTS

Rule 156. RESERVED.

Rule 157. COURT DISPOSITIONS REPORTED ON JUVENILE INFORMATION REPORT.

The “final violation” on the juvenile information report shall identify the charge against the child and shall cite the section, or law, or ordinance which the child is alleged to have violated or attempted to violate.

The adjudication made by the court shall involve only the “final violation” charged by the police, unless the judge at the adjudication shall determine that a lesser or related offense was committed.

The disposition and the court status of the child shall be reported to the police in a manner to be determined by the Family Court. In traffic violation cases, an action by the court affecting the child’s privilege to drive shall be indicated by license suspended, restricted or revoked.

Rule 158. RESERVED.