

Electronically Filed
Supreme Court
SCRU-14-0001083
26-AUG-2014
11:03 AM

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
MEDIATION RULES FOR PROBATE, TRUST, CONSERVATORSHIP,
AND GUARDIANSHIP (MEDIATION RULES)

ORDER AMENDING RULES 5 AND 7 OF THE MEDIATION
RULES FOR PROBATE, TRUST, CONSERVATORSHIP,
AND GUARDIANSHIP (MEDIATION RULES)

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rules 5 and 7 of the
Mediation Rules for Probate, Trust, Conservatorship,
and Guardianship (Mediation Rules) appended to the Hawai‘i
Probate Rules as Exhibit A are amended, effective January 1,
2015, as follows (deleted material is bracketed and stricken; new
material is underscored):

Rule 5. AUTHORITY OF MEDIATORS.

Mediators shall work with the parties to facilitate agreements on substantive and procedural matters and attempt to aid in the voluntary resolution of cases. Mediators shall terminate the mediation if the mediator believes the process is unproductive or that any party or attorney is not mediating in good faith. Upon prior written approval of all parties to the mediation, m~~M~~mediators may recommend to the court that sanctions be imposed against a party or attorney who has failed to comply with these Mediation Rules. Mediators shall not issue decisions or make procedural or substantive recommendations about the case to the court.

Rule 7. CONFIDENTIALITY.

The mediator shall not communicate any matters discussed at the mediation conference to any court, except as allowed by the Uniform Mediation Act or other relevant law. Likewise, parties and attorneys are prohibited from informing the court of discussions or actions taken at the mediation except as allowed by the Uniform Mediation Act or other relevant law. This rule does not require the exclusion of any evidence otherwise discoverable merely because it was presented in the course of the mediation. This rule also does not require exclusion of evidence that is offered for another purpose such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

DATED: Honolulu, Hawai‘i, August 26, 2014.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

