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Supreme Court
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SCRU-11-0000632

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the
RULES OF THE CIRCUIT COURTS OF THE STATE OF HAWAI'I

ORDER AMENDING RULE 12.2 OF THE RULES
OF THE CIRCUIT COURTS OF THE STATE OF HAWAI'I
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rule 12.2 of the Rules of the Circuit Courts of the State of Hawai'i is amended, effective January 1, 2015, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 12.2. ALTERNATIVE DISPUTE RESOLUTION.

* * *

(d) Disclosure. Unless waived by all parties, the parties, counsel, and neutral shall make a reasonable inquiry concerning and disclose to each other the identity of the parties, potential witnesses who may be called at trial, and other participants who may be included in the ADR process. In addition, the neutral shall make a reasonable inquiry and disclose as soon as practical before accepting mediation any other facts and information, including a financial or personal interest in the outcome of the mediation and any existing or past relationships, that a reasonable person would consider likely to affect the impartiality of the neutral, including the neutral's relationships with counsel, a mediation party, foreseeable mediation party, or non-party participant in the mediation. The parties, counsel, and neutral shall have a continuing obligation to disclose as soon as practicable any information they subsequently learn during the ADR process that a reasonable person would consider likely to affect impartiality of the neutral.

* * *

(f) Communication by parties, counsel, neutral, and the court.

Unless the parties otherwise agree in writing or it is otherwise authorized and approved by the adjudicating court pursuant to the Uniform Mediation Act or other law, the neutral, counsel, the parties, and other participants in any mediation, shall not communicate with the civil court adjudicating the merits of the mediated matter (including the settlement or trial judge) about the substance of any position, offer, or other matter related to mediation, 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 mediator 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 or terminated; who attended; and, if applicable, whether a settlement or resolution was reached with regard to some or all issues presented.

* * *

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

