DISSENTING OPINION BY REIFURTH, J.

The majority applies the two-day extension for service by mail provided for in Hawaiʻi Probate Rules ("HPR") Rule 10(d) and concludes that the circuit court erred in holding that it did not have jurisdiction over Ramos's Petition. I conclude, however, that HPR Rule 10(d) has no application in the case of a petition filed under Hawaii Revised Statutes ("HRS") § 560:3-806(a) (2006) and therefore does not enlarge the filing period in this case. I base my conclusion on the plain language of the rule and statute in question, on analogous caselaw, and on the underlying purpose of enlargement rules such as this. Without the two-day enlargement for service by mail, Ramos's petition was untimely. As such, I respectfully dissent.

My disagreement with the majority is rooted in the plain language of HRS § 560:3-806(a), which does not mention *service*—whether transmitted by mail or otherwise—anywhere, and HPR Rule 10(d), which enlarges a prescribed time period specifically when it is triggered by the date of *service* and service has been transmitted by mail. Indeed, the drafters of HRS § 560:3-806(a) specified that the sixty-day time-period for filing a petition would begin to run "after the *mailing* of the notice of disallowance." (Emphasis added.) *See generally Enoka v. AIG Haw. Ins. Co.*, 109 Hawaiʻi 537, 544, 128 P.3d 850, 857 (2006) ("'[W]here the terms of a statute are plain, unambiguous and explicit, . . . our sole duty is to give effect to the statute's plain and obvious meaning.'" (quoting *T-Mobile USA, Inc. v. Cnty. of Haw. Planning Comm'n*, 106 Hawaiʻi 343, 352-53, 104 P.3d 930, 939-40 (2005))). And if the drafters had intended the sixty-day time-period to begin instead *after the service of a notice of disallowance by mail*, as the majority holding suggests, they likely would have used more precise language. *Compare* Haw. Rev. Stat. § 560:3-806(a) ("Every claim . . . is barred so far as not allowed unless the claimant files a petition . . . not later than sixty days *after the mailing of the notice of disallowance*." (emphasis added)), *with* Haw. Rev. Stat. § 560:5-309(a) ("A copy of a petition for guardianship and notice of the hearing on the petition *shall be served personally* on the respondent. . . . A failure to *serve* the respondent with a notice . . . shall

preclude the court from granting the petition." (emphasis added)). Under the ordinary canons of construction employed by this court,[1] I read the drafters' choice not to reference *service* as intentional.

The lack of reference to *service* in HRS § 560:3-806(a) removes that statute from the purview of HPR Rule 10(d), which, by its plain language, only applies to enlarge a statutory time period when a particular method of service is used. Haw. Prob. R. 10(d) ("[T]wo days shall be added to the prescribed period" in situations where that prescribed period begins "after the *service* of a notice or other paper . . . and the notice or paper *is served* . . . *by mail*." (emphasis added)). Indeed, where our courts have applied Hawaiʻi Rules of Civil Procedure ("HRCP") Rule 6(e)—a rule with substantively identical language to HPR Rule 10(d)—to enlarge a prescribed time period by two days, those courts have done so only where that time period specifically begins to run upon *service* of some paper or other document *and* where service has been transmitted by mail.[2] Furthermore,

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[1] *See Fagaragan v. State*, 132 Hawaiʻi 224, 242, 320 P.3d 889, 907 (2014) ("[This court follows] the canon of construction expressio unis est exclusio alterius, [which] holds that 'to express or include one thing implies the exclusion of the other, or of the alternative.'" (quoting *Black's Law Dictionary*, 661 (9th ed. 2009)); Haw. Rev. Stat. § 1-16 (2009) ("What is clear in one statute may be called in aid to explain what is doubtful in another.").

[2] *Compare Rivera v. Dep't of Labor & Indus. Relations*, 100 Hawaiʻi 348, 351 n.4, 60 P.3d 298, 301 n.4 (2002) (applying HRCP Rule 6(e)'s two-day extension to HRS § 91-14(b), under which the triggering event is "*service* of the certified copy of the final decision and order" (emphasis added), where service was transmitted by mail), *and In re Brandon*, 113 Hawaiʻi 154, 157-58, 149 P.3d 806, 809-10 (App. 2006) (applying Hawaiʻi Administrative Rules § 6-61-21(e) (2005), which is substantively identical to HRCP Rule 6(e), to enlarge a ten-day period beginning "after the decision and order *has been served*" under HRS § 271-32(b) (Supp. 2005) (emphasis added)), *with Danielson v. Tanaka*, 9 Haw. App. 484, 488, 848 P.2d 383, 385-86 (1993) (per curiam) (holding that the two-day extension in District Court Rules of Civil Procedure Rule 6(e), which is identical to HRCP Rule 6(e), does not apply to enlarge HRS § 286-260(a)'s provision stating that the petition for review must be filed "within thirty days after the administrative hearing decision *is mailed*" (some emphasis removed), yet basing its holding on legislative intent rather than plain language of the provisions in question), *and Waikiki-Madeyski v. EAN Holdings, LLC*, No. CAAP-14-0001129, 2015 WL 3422267, at *1 n.3 (Hawaiʻi Ct. App. May 27, 2015) (declining to apply HRCP Rule 6(e) to the limitations period prescribed by HRS § 386-88 (Supp. 2014), which allows parties to file a notice of appeal "within thirty days after *mailing* of a certified copy of the decision or order" (emphasis added), yet not discussing the incompatible language of the provisions at issue). While the courts in *Danielson* and *Waikiki-Madeyski*, *supra*, did not explicitly base their decisions on the date-of-mailing versus date-of-service distinction, their results are consistent

federal courts interpreting Federal Rule of Civil Procedure ("FRCP") Rule 6(d), formerly 6(e), in analogous cases *have* based their holdings on these exact grounds.[3/] *See generally Rivera*, 100 Hawaiʻi at 351 n.4, 60 P.3d at 301 n.4 (interpreting HRCP Rule 6(e) by reference to its counterpart, FRCP Rule 6(d)); *accord Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of the City & Cnty. of Honolulu*, 86 Hawaiʻi 343, 350 n.4, 949 P.2d 183, 190 n.4 (1997). So too have state courts interpreting rules similar to FRCP Rule 6(d).[4/]

The purpose behind enlargement rules also supports the conclusion that HPR Rule 10(d) is not applicable to the case at

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with the plain-language analysis outlined here.

[3/] *E.g.*, *Hatchell v. United States*, 776 F.2d 244, 246 (9th Cir. 1985) (declining to extend the time for commencing suit because "the limitations period applicable to Hatchell's claim runs from 'the date of mailing,' 28 U.S.C. § 2401(b), and not from 'the service of a notice' as contemplated by [FRCP] Rule 6(e)."); *Carr v. Veterans Admin.*, 522 F.2d 1355, 1357 (5th Cir. 1975) (stating the same and citing *Clements v. Fla. E. Coast Ry. Co.*, 473 F.2d 668, 670 (5th Cir. 1973) (per curiam) (finding that "[FRCP Rule] 6(e) has no application" where the proscribed limitations period "ran from the date the order was filed," and not from the date of service); *Army & Air Force Exch. Serv. v. Hanson*, 250 F.Supp. 857, 858–59 (D. Haw. 1966) (holding that FRCP Rule 6(e) did not apply to enlarge the time for filing a complaint to review an order because, although "[i]t is true that the service of a copy of the order is necessary for its validity[,] nothing . . . indicates that the thirty-day period [under 33 U.S.C. 921(a)] is to commence after service of a copy of the order."). *See also, e.g.*, *United States ex rel. Ten. Valley Auth. v. Easement & Right-of-Way*, 386 F.2d 769, 771 (6th Cir. 1967) (refusing to apply FRCP Rule 6(e) to enlarge the twenty-day time limitation under 16 U.S.C. § 831x, which states that "[e]ither or both parties may file exceptions . . . within twenty days from the date of filing . . . ," because, "[a]lthough the Clerk may send a copy of the award by mail, the Rule clearly contemplates situations in which actual service is offered by mail[,]" and "[t]he act of depositing the exception in the mail is not a filing").

[4/] *E.g.*, *Chance v. Wash. Metro. Area Transit Auth.*, 920 A.2d 536, 542-43 (Md. Ct. Spec. App. 2007) ("[T]he triggering event under Section 9-737, to wit, 'the date of the mailing,' is substantially different from 'service . . . by mail' under [Maryland] Rule 1-203(c)[,]" to which former FRCP Rule 6(e) is the federal analogue.); *Chandler v. United States*, 846 F.Supp. 51, 53 (M.D. Ala. 1994) (holding that FRCP Rule 6(e) is not applicable to 28 U.S.C. § 2401(b), which specifies that the six month limitations period commences "after the date of *mailing* . . . of notice"). *See also, e.g.*, *Davis v. Lukhard*, 106 F.R.D. 317, 318 (E.D. Va. 1984) (stating that "[t]he additional three days provided by [FRCP] Rule 6(e) do not apply to judgments which are not the subject of 'service,' [such as FRCP Rule 59(e) motions, which 'must be filed no later than 28 days after the entry of the judgment,'] whether or not the mails were used to transmit the judgment from the Clerk to a party[,]" and citing decisions from the 1st and 5th Federal Circuits in support); *Pizzichil v. Motors Ins. Corp.*, 90 F.R.D. 119, 121 (E.D. Pa. 1981) ("'[E]ven though the operative statute or regulation provides that notice of the decision must be mailed to a party, the filing . . . [is what] trigger[s] the period within which action must be taken[, a]nd where this is the case, [FRCP] Rule 6(e) has no application." (quoting 2 Moore, *Federal Practice* P 6.12, p.1500.210)).

hand. Generally, "service by mail is complete upon mailing," rather than upon receipt, and certain prescribed limitation periods are tolled by the date of service, where there are multiple methods of service available to parties. Haw. R. Civ. P. 5(b)(1) & (3). As such, courts apply extension provisions like HPR Rule 10(d) to mitigate any disadvantage to a person who is served by mail, rather than by any other available methods.[5/] Under HRS § 560:3-806(a), however, there are no alternative methods for transmitting the notice of disallowance. Thus, the rationale typically supporting extension rules such as HPR Rule 10(d) does not apply.[6/]

Because HRS § 560:3-806(a)'s sixty-day time period is measured from the "date of mailing," and not from the date of service, and because the rationale typically supporting extension rules is inapplicable in such cases, HPR Rule 10(d) does not apply in the context of this case. As such, I would hold that Ramos's Petition, which was filed sixty-two days after the sixty-day limitations period began to run, was untimely. Accordingly, I would affirm the circuit court's determination that it did not

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[5/] *See Rivera*, 100 Hawaiʻi at 351, 60 P.3d at 301 ("HRCP Rule 6(e) was put in place to alleviate any unfairness that might be caused by transmission [of service] by mail."); *Waikiki Marketplace*, 86 Hawaiʻi at 350 n.4, 949 P.2d at 190 n.4 (citing Wright & Miller, *Federal Practice & Procedure: Civil 2d* § 1171, at 514-15 (1987)); *see also*, *Chance*, 920 A.2d at 543 ([Where a]ll persons entitled to appeal . . . have exactly the same amount of time in which to note an appeal[, the local counterpart to FRCP Rule 6(e)] is not needed to equalize the actual time within which an appeal can be noted."); *cf*. *Vazquez-Rivera v. Figueroa*, 759 F.3d 44, 49 (1st Cir. 2014) (noting that FRCP 6(d) would not have applied if service had been delivered by hand, rather than by mail). This underlying purpose also explains why courts refuse to apply otherwise-applicable, HPR Rule 10(d)-type extensions to situations wherein the date of delivery is known. *See Young v. Desco Coatings of Kan., Inc.*, 179 F.R.D. 610, 613 (D. Kan. 1998) (noting that the 3rd, 6th, and 11th Federal Circuits do not apply FRCP's three-day rule where the actual date of receipt is known); *e.g.*, *Waikiki Marketplace*, 86 Hawaiʻi at 352, 949 P.2d at 192 (declining to apply HRCP Rule 6(e)'s two-day extension to enlarge the thirty-day time period under HRS § 91-14(b) where appellees failed to establish proof of mailing, and instead using the delivery date, which was established in the record, "as the measuring rod for determining the timeliness" of the appeal).

[6/] *See, e.g.*, *Madden v. Cleland*, 105 F.R.D. 520, 525 (N.D. Ga. 1985) (holding that FRCP Rule 6(e)'s extension did not apply where court precedent stated "that the defendants' duty to respond is triggered by their execution of the acknowledgment [of service] rather than by the mailing of service to them," and as such, "[t]here is no need to roughly equalize the number of working days for litigants served personally and for those served by mail to prepare an answer to a complaint when the period for both litigants begins with their acknowledgment of receipt of process").

have jurisdiction over Ramos's claims and would proceed to consider Ramos's remaining points of error, including whether in fact they may be moot.