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SCRU-13-0000071

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

In the Matter of the
Hawai‘i Probate Rules

ORDER AMENDING RULE 5 (b) COMMENTARY
OF THE HAWAI‘I PROBATE RULES

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

IT IS HEREBY ORDERED that the Commentary to Rule 5 (b) of the Hawai‘i Probate Rules, is amended, effective January 1, 2017, as follows (deleted material is bracketed and stricken; new material is underscored):

Rule 5. SIGNING OF DOCUMENTS.

(b) Signing by Attorneys. Except as required by statute or by rule, any petition, application, response, objection, memorandum or other substantive document of a party represented by an attorney (including documents signed by an attorney) shall be signed by the attorney of record in the attorney's individual name. The signature of an attorney constitutes a certificate by the attorney that the attorney has read the submittal; that to the best of the attorney's knowledge, information, and belief, there is good ground to support it; and that it is not being presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a submittal is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the proceeding may proceed as though the submittal had not been served. For willful violation of this rule, an attorney may be subjected to an appropriate sanction. Similar action may be taken if scandalous or indecent

matter is inserted. The attorney's name shall be typed or legibly printed directly below the attorney's signature.

COMMENTARY:

This clarifies the role of the attorney in the preparation and presentation of documents. An attorney, by signing any petition, application, response, objection, memorandum or other substantive document, and filing it with the court, is certifying [Whether or not the attorney signs any substantive document as counsel for a party, the attorney must also verify] that the attorney understands and has complied with this Rule 5[(b)]. Therefore, if any attorney signs any substantive document as counsel for a party, a separate Rule 5(b) certification is not required. [A suggested form of verification follows:

HAWAII PROBATE RULE 5(b) CERTIFICATION

NAME OF ATTORNEY
Attorney for [Party]

DATED: Honolulu, Hawai'i, July 13, 2016.

- /s/ Mark E. Recktenwald
- /s/ Paula A. Nakayama
- /s/ Sabrina S. McKenna
- /s/ Richard W. Pollack
- /s/ Michael D. Wilson

